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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 613

INLAND EMPIRE DISTRICT COUNCIL, LUMBER AND SAW MILL WORKERS UNION, LEWISTON, IDAHO, ET AL., PETITIONERS

v.

HARRY A. MILLIS, INDIVIDUALLY AND AS CHAIRMAN AND MEMBER OF THE NATIONAL LABOR RELATIONS BOARD, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia (R. 15–16) is unreported. The opinions in the United States Court of Appeals for the District of Columbia (R. 20–24) are reported in 144 F. (2d) 539. The supplemental decision and certification of representatives issued by the National Labor Relations Board is reported in 55 N. L. R. B. 255. Deci-

sions of the Board in earlier phases of this case are reported in 51 N. L. R. B. 288 and 52 N. L. R. B. 1377 (Appendix A, pp. 65–102, *infra*).[1]

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia (R. 24) was entered on July 24, 1944. The petition for a writ of certiorari was filed on October 19, 1944 and was granted on December 4, 1944 (R. 26). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the district courts of the United States have jurisdiction to set aside a certification, issued by the National Labor Relations Board under Section 9 (c) of the National Labor Relations Act, that a particular labor organization is the collective bargaining representative of the employees in a designated unit, upon allegations by a rival labor organization that the hearings conducted by the Board in the course of its investigation of the question concerning representation did not constitute the hearings contemplated by Section 9 (c) of the Act.

2. A further question argued by petitioners, but which we think is not presented in this case,

[1] For the convenience of the Court, copies of the Board's decisions and certification have been printed as Appendix A to this brief (pp. 65–102, *infra*).

is whether the district courts of the United States have jurisdiction to set aside such a certification of representatives, upon allegations by the rival organization showing that the hearings conducted by the Board were inadequate under the due process clause of the Fifth Amendment of the Constitution.

STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act (49 Stat. 449, 29 U. S. C. 151, *et seq.*) are set forth in Appendix B to this brief, pp. 103–107, *infra*.

STATEMENT

On March 9, 1943, certain local unions of International Woodworkers of America, affiliated with the Congress of Industrial Organizations, herein collectively called the C. I. O., filed petitions requesting the National Labor Relations Board to certify them as the collective bargaining representatives of the employees at the Clearwater Unit Plant, the Clearwater Logging Department, and the Bovill Logging Department, respectively, of Potlatch Forests, Inc., hereinafter called the Company (R. 3–4; 51 N. L. R. B. 288, 289–290, pp. 65–66, 68, *infra*).[2] The plants in

[2] Upon the Board's motion to dismiss, the facts appearing from the Board's decisions which serve to amplify and clarify the allegations in the complaint may be judicially noticed. *Fletcher* v. *Jones*, 105 F. (2d) 58, 61–62 (App. D. C.), and cases there cited; *Phillips* v. *Grand Trunk Western Ry. Co.*, 195 Fed. 12, 16 (C. C. A. 6), affirmed, 236 U. S. 662, 664; IX Wigmore, *Evidence*, sec. 2579. See also Section 3 (b) of the Act, Appendix B, p. 103, *infra*.

question are three of five logging and milling operations in Idaho which the Company, a Maine corporation, conducts in connection with its general lumber manufacturing business, the other two plants being its Potlatch Unit plant and its Rutledge Unit plant (R. 3; 51 N. L. R. B. 288, 289, p. 67, *infra*).

The Board consolidated the cases arising upon the C. I. O. petitions and provided for an appropriate hearing, which was held on May 14 and 15, 1943, before a trial examiner in Lewiston, Idaho. The C. I. O., the Company, and petitioners, hereinafter called the A. F. of L.,[3] appeared, were represented by counsel, and participated in the hearing (R. 4; 51 N. L. R. B. 288, 289, p. 66, *infra*). The A. F. of L. contended at the hearing that the production and maintenance employees at all five operations or plants of the Company constituted the appropriate unit and it moved to dismiss the C. I. O. petitions on the ground that

[3] Petitioners are five locals of the Lumber and Sawmill Workers Union, chartered by the United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor; Inland Empire District Council, Lumber and Sawmill Workers Union, whose membership comprises the five locals; and Harry Haines, president of the Inland Empire District Council (R. 1-2). The A. F. of L. appeared in the hearing referred to in the text as the five locals, affiliated with the Northwestern Council Lumber and Sawmill Workers (51 N. L. R. B. 288, 289-290, pp. 66-68, *infra*). Unless otherwise indicated, the term A. F. of L. will be used without making specific reference to whether or not all petitioners are thereby intended.

the separate units consisting of each of three of the operations were inappropriate (R. 4; 51 N. L. R. B. 288, 289, 290, pp. 66, 68, *infra*). On July 13, 1943, the Board, upon the entire record made at the hearing and after considering a brief and a supplemental brief which the A. F. of L. submitted, rendered its Decision and Order (R. 4; 51 N. L. R. B. 288, pp. 65–73, *infra*).

The Board found, in substance, that by 1941 the A. F. of L. had successfully organized and been selected as bargaining representative of the employees of all five of the Company's operations; that on June 5, 1941, the Company and the five locals of the A. F. of L. executed a "master contract" recognizing the A. F. of L. as the exclusive representative of the production and maintenance employees at all five operations and establishing "basic conditions and general principles" upon a company-wide basis; that this contract had been renewed and was still in effect; and that supplementary local contracts had been entered into between the separate locals and the Company covering purely local affairs in each of the separate operations (R. 4; 51 N. L. R. B. 288, 291–292, pp. 70–72, *infra*). The Board concluded that the history of collective bargaining between the Company and the A. F. of L. "clearly indicates the propriety of a unit consisting of the logging and mill employees of the Company"; that "the bargaining on matters of wages, hours, and

general working conditions has been conducted by the A. F. of L. for all the production and maintenance employees of the Company"; and that "units consisting solely of the employees of the three operations of the Company which the C. I. O. seeks to represent are inappropriate" (R. 4; 51 N. L. R. B. 288, 292, pp. 72, 73, *infra*). Accordingly, it granted the motion of the A. F. of L. to dismiss the C. I. O. petitions (R. 4; 51 N. L. R. B. 288, 289, 293, pp. 67, 73, *infra*).[4]

Three days later, on July 16, 1943, the C. I. O. filed with the Board a further petition requesting that it be certified as the exclusive bargaining representative in a single unit composed of the production and maintenance employees of the Company at all five of its operations, excluding clerical, supervisory, confidential, and temporary employees, as well as employees of Potlatch Townsite and of Potlatch Mercantile Company (R. 4; 52 N. L. R. B. 1377, 1381, pp. 75, 81–82, *infra*). This unit conformed generally to the unit covered by the contract of June 5, 1941, between the Company and the A. F. of L., as amended by the local agreements covering each of the Company's op-

[4] The Board found it unnecessary, in view of its agreement with the A. F. of L.'s objections to the unit, to decide whether the contracts between the A. F. of L. and the Company constituted a bar to a determination of representatives (51 N. L. R. B. 288, 290, note 2; p. 68, *infra*). It is the Board's practice generally to hold that established bargaining relations should remain undisturbed for a reasonable period, usually one year. National Labor Relations Board, *Eighth Annual Report* (Gov't Print. Off., 1943), pp. 45–49.

erations (52 N. L. R. B. 1377, 1381, p. 81, note 11, *infra*).[5]

On September 14, 1943, the Board, upon motion of the C. I. O., issued and served upon the A. F. of L. a notice to show cause why (1) the decision and order in the case arising upon the prior petitions of the C. I. O., which had been dismissed, should not be vacated; (2) the petitions in those cases should not be reinstated; (3) the new petition, requesting a single-company-wide unit should not be made a part of the record in the earlier cases and treated as an amendment to the petitions in those cases; (4) the statement of the Board's field examiner concerning C. I. O. claims of authorization for the purpose of representation in the subsequent case should not be made part of the record in the earlier cases;[6] and (5) the Board

[5] The Board so found, and the A. F. of L.'s complaint contains no allegation to the contrary. See, also, pp. 9–10, *infra*.

[6] This has reference to the Board's practice of having its field examiners check union authorization cards in each case before proceedings are conducted, in order to satisfy the Board as a preliminary matter that the organization has sufficient interest to warrant the Board's proceeding. See National Labor Relations Board, *Eighth Annual Report* (Gov't Print. Off., 1943), p. 44. If hearing is thereafter had, the examiner is required to introduce into evidence at the hearing a statement showing the results of the card check. The practice was first adopted in 1940 and has been uniformly followed. The Board has frequently explained in its decisions the *ex parte* nature of the investigation and that its purpose is not to determine the actual representation of the labor organization, but is merely a safeguard against indiscriminate institution of proceedings by labor organizations which might, in fact, have no substantial membership among the employees. See pp. 10–11, *infra*.

should not reconsider and proceed to a new decision and order in the earlier cases as thus supplemented, without holding a further hearing in those cases (R. 4–5; 52 N. L. R. B. 1377, 1378, pp. 75–76, *infra*). In response to said notice, the A. F. of L. filed its "Protest and Objection," alleging in substance that (a) the Board's proposed order contemplated a decision by the Board without the taking of evidence, which would be based partially upon a report and investigation of the Board's field examiner concerning C. I. O. claims of authorization for the purpose of representation which was hearsay and *ex parte* as to the A. F. of L., since the A. F. of L. was deprived of an opportunity to cross-examine with respect thereto; (b) the employees at the Potlatch Unit plant and the Rutledge Unit plant would be deprived of an opportunity to demonstrate their bargaining status, inasmuch as they had no opportunity at the former hearing, nor at any time since, to present evidence on their own behalf; and (c) the Board had no authority to set aside an existing contract by such proceedings (R. 5; 52 N. L. R. B. 1377, 1378, p. 76, *infra*).

On October 14, 1943, the Board issued its decision (R. 6; 52 N. L. R. B. 1377, pp. 74–86, *infra*). As appears from the face of the decision, the Board considered the A. F. of L.'s objections and protests on the return of the notice to show cause, but it found that these were "insufficient"

(*id.* at p. 1378, p. 77, *infra*). As to the A. F. of L.'s objection based upon the allegation that the employees at the Potlatch Unit plant and the Rutledge Unit plant were deprived of an opportunity to establish their bargaining status, the Board pointed out that at the hearing in the original cases the C. I. O. sought three separate units consisting of the production and maintenance employees at the Clearwater Unit plant, the Bovill Logging department, and the Clearwater Logging department, and that the A. F. of L. contended in opposition that all production and maintenance employees at the five operations of the Company constituted the appropriate unit, "basing its contention upon the history of industrial relations of the Company which, since 1941, has bargained with respect to its employees upon the basis of a single company-wide unit." The Board pointed out, further, as has already been noted (pp. 6–7, *supra*), that the unit presently sought by the C. I. O. conforms generally to the A. F. of L.'s contract of June 5, 1941, as amended by the local agreements covering each operation, and that the A. F. of L. had theretofore "conceded no severability in the bargaining status of the employees comprising any one of the several operations now included within the bargaining unit which it currently represents." The Board declared that in these circumstances "any implication that the bargaining rights or status of the

employees at two of the operations is in any way different from that of the remaining employees in the unit would be diametrically opposed to the position that the A. F. of L. has constantly maintained herein, and which is evidenced by its bargaining relations with the Company since 1941." The Board noted that all five of the locals had appeared and participated by counsel in the earlier hearing. In view of all these facts, it concluded that the A. F. of L.'s objections to the proposed procedure on the score of alleged lack of opportunity to the employees at the Potlatch and Rutledge Unit plants to establish their bargaining status were untenable (*id.* at p. 1381, pp. 81–82, *infra*).

With respect to the A. F. of L.'s objection to inclusion of the field examiner's report as to C. I. O. authorizations on the ground that the statements contained therein were hearsay and, as to the A. F. of L., *ex parte* and not subject to cross examination, the Board pointed out that such statements are based upon Board investigations which are necessarily *ex parte*, that the statements are not offered as final proof of representation but are merely safeguards against the indiscriminate institution of representation proceedings by labor organizations which might in fact have no substantial membership among the employees in the unit claimed to be appropriate, and that the showing of substantial representation

is, accordingly, an administrative requirement of the Board to satisfy it, as a preliminary matter, that it is justified in proceeding with the investigation. It concluded, therefore, that the A. F. of L.'s objection on this ground was likewise without merit (*id.* at p. 1380, note 10, pp. 80–81, *infra*).

The Board also examined fully into the contractual relations between the A. F. of L. and the Company, as shown by the record and the allegations of the A. F. of L., for the bearing, if any, which these agreements might have upon its proposed procedure (*id.* at pp. 1379–1380, pp. 78–80, *infra*).[7] The Board found that the master agreement of June 5, 1941, provided that it could be modified or terminated upon sixty days' written notice by either party, and that in the absence of such notice it was automatically terminated on June 1, 1942; that the contract had been subsequently renewed on May 29, 1942, such renewal expiring on June 1, 1943; and that by letters dated March 9 and 29, 1943, the C. I. O. had requested the Company to recognize it as the bargaining representative of the employees at the Clearwater Unit plant and the Bovill and Clearwater Logging departments (*id.* at p. 1380, pp. 78–79, *infra*). The Board stated that it had

[7] As has been stated above (note 4, p. 6), the Board previously had found it unnecessary to determine the effect, if any, of the contracts upon the proceedings, because the units sought by the C. I. O. were, in any event, inappropriate.

received notice that the A. F. of L. contract had once more been renewed, since the filing of the original petitions by the C. I. O. (*ibid.*, note 7, p. 79, *infra*), but it found that since the original notices of bargaining demands given by the C. I. O. were timely and because the contract of June 5, 1941, as subsequently renewed, was terminable at any time upon sixty days' notice, the agreement did not constitute a bar to the proceedings (*id.* at pp. 1377, 1380; pp. 79–80, *infra*).

Upon the basis of its conclusions that the A. F. of L.'s objections were without merit and upon the entire record made, the Board vacated its previous decision and order in the cases arising upon the earlier petitions of the C. I. O., reinstated those petitions, made the later C. I. O. petition a part of the record in the earlier cases, treating it as an amendment to those petitions, and made the statement and revised statement of the field examiner concerning claims of authorization for the purpose of representation part of the record in the earlier cases (R. 6; 52 N. L. R. B. 1377, 1378–1379, p. 77, *infra*). The Board thereupon reconsidered the earlier cases upon the entire record made at the earlier hearing as thus supplemented in the subsequent proceedings. It found that a question had arisen concerning the representation of employees of the Company within the meaning of the Act (*id.* at p. 1381, p. 81, *infra*), and that the bargaining history be-

tween the Company and the A. F. of L. clearly indicated that a unit comprised of all production and maintenance employees at the Company's five operations was appropriate (*id.* at p. 1382, pp. 82–83, *infra*).

The Board also considered and made findings in its decision with respect to the inclusion or exclusion from the appropriate unit, of certain "fringe" classifications of employees whose status, the Board stated, was in dispute at the hearing (*id.* at p. 1382, pp. 83–84, *infra*). As appears from the decision, these included the employees of a store which the Company operated in Bovill, Idaho, whom the A. F. of L. contended should be included and the C. I. O. contended should be excluded; scalers employed at the Clearwater Logging department, whom both organizations desired included; and militarized and deputized guards and watchmen, whom both organizations likewise desired included. As to the store employees, the Board pointed out that the A. F. of L. based its contention for their inclusion upon the alleged facts that they were included within the scope of the local contract covering the Bovill Logging department and that it had bargained with the Company on their behalf, but the Board found that in point of fact the local contract was silent on the matter, and, further, that in any event the interests of the store employees were not akin to those of the production and maintenance

employees. The Board therefore excluded them from the unit. The Board found, also, that the interests and duties of the scalers were sufficiently allied to those of the logging employees to warrant their inclusion in the unit and therefore included them, as the A. F. of L. and C. I. O. had requested. It excluded the militarized and deputized guards and watchmen, in accordance with its usual policy, citing in that connection its decision in *Matter of Dravo Corporation,* 52 N. L. R. B. 322, in which it had fully considered and announced the basis for that policy. The Board decided, further, that the unit should exclude all supervisory employees, clerical employees, confidential employees, and temporary employees, these groups of employees falling into classifications which the Board normally excludes from production and maintenance units. In addition, it excluded several groups of other working men, i. e., employees of Potlatch Mercantile Company, employees of the Townsite Department, and foresters, who were excluded from the units in the local contracts which the A. F. of L. had with the separate operations of the Company (52 N. L. R. B. 1377, 1382–1383, and notes 16, 17 and 18, pp. 83–84, *infra*). Finally the Board excluded employees of the Washington-Idaho-Montana Railroad (*id.* at p. 1382, p. 84, *infra*), which the Board found to be a subsidiary common carrier corporation owned and operated by the Company (*id.* at p. 1379, p. 77, *infra*).

The Board directed that an election be conducted among the employees in the appropriate unit to determine whether they desired to be represented by the A. F. of L., the C. I. O., or neither (*id.* at p. 1383, pp. 85–86, *infra*). In accordance with its usual practice, the Board decided that those eligible to vote should include all employees in the unit who were employed during the pay-roll period immediately preceding the date of the direction, including ill, vacationing, or temporarily laid-off employees and those in the armed forces of the United States who presented themselves in person at the polls, but excluded employees who had since quit or been discharged for cause (*id.* at p. 1383, p. 86, *infra*).

On November 9, 10, 11, and 12, 1943, the Board conducted an election among the employees in the appropriate unit under the direction of the regional director (R. 8–9). The C. I. O. received 1,118 votes and the A. F. of L. received 953 votes (R. 9).[8]

On November 17, 1943, the A. F. of L. filed "Objections and Exceptions to Election" (R. 9; 55 N. L. R. B. 255, 256, p. 88, *infra*). These are described in the Board's Supplemental Decision and Certification of Representatives (55

[8] There were 2,886 eligible voters in the unit, of whom 2,178 cast ballots. Of these, 83 were challenged, 3 were void, and 21 were for neither labor organization. The 83 challenges were never resolved because these ballots could not affect the results of the election (R. 9; 55 N. L. R. B. 255, p. 88, *infra*).

N. L. R. B. 255, 256, pp. 88–89, *infra*), as alleging that—[9]

> (1) the order directing the election was invalid, since no hearing was afforded by the Board, as required by statute, and since the evidence considered by the Board in ordering the election was, as to the A. F. L., hearsay and *ex parte*; (2) a substantial number of employees of * * * the Company, who are now in military service, were erroneously excluded from participating in the election because of the method of conducting said election; (3) the order directing the election excluded railway maintenance employees who are members of the Potlatch local of the A. F. L., a party to the Master Contract between the Company and the A. F. L.; (4) Townsite employees were improperly excluded from participating in the election; and (5) a number of votes were cast by employees added to the Company's pay roll subsequent to the Direction of Election.[10]

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[9] The complaint alleges merely that "* * * the plaintiff unions * * * filed objection to the election * * *" (R. 9). It contains no allegations contrary to the statements in the Board's Supplemental Decision and Certification of Representatives, quoted in the text.

[10] These objections were filed with the regional director who, under the Board's practice, on December 28, 1943, issued a report on the objections, which was served on all the parties and referred to the Board. In the report, the director recommended that, since the objections related to matters involving the propriety of the Board's Decision and Direc-

Thereafter, on January 11, 1944, the A. F. of L. also filed with the Board a motion to reconsider and vacate the Decision and Direction of Election, to vacate the election, to stay certification of representatives, and to grant an appropriate hearing (R. 9). As appears from the statement of the proceedings in the Board's Supplemental Decision and Certification of Representatives (55 N. L. R. B. 255, 256, pp. 89-90, *infra*), the A. F. of L. contended, in general, in support of its motion, that—[11]

> (1) the Decision and Direction of Election was issued without according the A. F. L. a hearing in accordance with its statutory rights in that it was not afforded an opportunity to present evidence with respect to issues not present in the original proceeding, referring specifically to Potlatch Mercantile and Potlatch Townsite employees, and other employees engaged in and about the two operations not involved in that proceeding; (2) no opportunity was accorded the A. F. L. to present evidence with respect to the appropriate pay roll to be used for determination of eligibility, or with respect to the proper times and places for the holding of the election; and (3) the A. F. L. was not given an adequate opportunity to present evidence with respect

tion of Election and did not relate to the conduct of the ballot, the objections should be overruled (55 N. L. R. B. 255, 256, p. 89, *infra*).

[11] The complaint contains no contrary allegations.

> to (a) the status of Washington-Idaho-Montana railroad employees, (b) the validity of the statement of the Field Examiner * * * which was considered as part of the record in the Decision and Direction of Election, (c) the status of employees of the Potlatch and Rutledge operations who had entered the armed services of the United States, (d) the impropriety of permitting the participation in the election of employees added to the Company's pay roll between the date of the hearing and the dates of the election, and (e) the nature and status of the contractual relations between the Company and the A. F. L.

On January 27, 1944, the Board issued its order, directing that a hearing be held on the matters raised in the A. F. of L.'s objections to the election and its motion, remanding the case to the regional director for that purpose, and deferring ruling upon the A. F. of L.'s request that the Decision and Direction of Election and the election be vacated, until after the Board had reconsidered the entire record, including the evidence to be adduced at the further hearing (R. 9; 55 N. L. R. B. 255, 257, pp. 90–91, *infra*). On February 18 and 19, 1944, a hearing was held pursuant to the aforesaid order, before a trial examiner of the Board (R. 10). The A. F. of L., the C. I. O., and the Company appeared and participated fully (R. 10; 55 N. L. R. B. 255, 257,

p. 91, *infra*). Following this hearing, the Board, on March 4, 1944, issued its Supplemental Decision and Certification of Representatives (R. 10; 55 N. L. R. B. 255, pp. 87–102, *infra*).

In the Supplemental Decision, the Board made supplemental findings of fact which were based upon the entire record in the case, expressly including the election report, the A. F. of L.'s objections and exceptions, its motion for reconsideration, and the evidence taken at the hearing on the motion and objections (55 N. L. R. B. 253, 257, p. 91, *infra*). The Board first reviewed the entire proceedings had in the case and concluded that the requirements of an appropriate hearing had been met (*id.* at pp. 257–259, pp. 91–95, *infra*).[12] It therefore overruled the A. F. of L.'s contention that it had not been accorded a hearing (*id.* at p. 259, p. 95, *infra*). It then turned to a discussion of the A. F. of L.'s other contentions in support of its motion and objections to the election. With respect to the A. F. of L.'s contentions based upon its contractual relations with the Company, the Board found that the mas-

[12] There is no allegation in the complaint that the A. F. of L. was not given full opportunity at the further hearing to adduce evidence as to all of the matters covered by its motion and objections to the election. The complaint merely alleges that "The denial of a fair and appropriate hearing" before the election "was not and could not be cured by the granting and holding of a hearing on February 18 and 19, 1944, which was more than three months after the holding of the election" (R. 8).

ter contract of June 5, 1941, as renewed, had been terminated on May 1, 1943, pursuant to notice issued by the Company in accordance with the sixty-day cancellation clause contained in the agreement, and that the National War Labor Board had thereafter issued certain orders in proceedings before it, directing an extension of the contract but only "until a new exclusive bargaining agency is certified by the National Labor Relations Board" (55 N. L. R. B. 255, 259–260, pp. 95–96, *infra*; see also R. 10–11).

With respect to the A. F. of L.'s contentions that it was entitled to introduce evidence relating to the right of employees in the armed forces to vote, to the appropriate pay roll for determining eligibility to vote, to the times and places for the conduct of the election, and to the inappropriateness of permitting persons to vote who were added to the pay roll between the date of the hearing in the original case and the date of the election, the Board, after pointing out that the A. F. of L. had been permitted at the further hearing to adduce such evidence, found that the evidence adduced[13] did not warrant departure, as desired by the A. F. of L., from its customary practice of not voting employees in the armed forces by mail ballots, or warrant a disturbance of its customary findings

[13] It should be noted that the A. F. of L. had also had full opportunity at the first hearing to state its position as to these matters and to adduce supporting evidence (see discussion at pp. 59–60, *infra*).

as to eligibility, made in its Decision and Direction of Election (55 N. L. R. B. 255, 260–261, pp. 97–98, *infra*). With respect to the status of employees of the Washington-Idaho-Montana Railroad, the Board found, on the basis of the evidence adduced at the further hearing, that although the railroad was a wholly owned subsidiary of the Company, it was a separate and distinct corporate enterprise, that the railroad's employees were not employees of the Company, and that they were covered by a contract between one of the A. F. of L. locals and the railroad as a separate unit (55 N. L. R. B. 255, 261, pp. 98–99, *infra*).[14]

The Board found, with respect to the Potlatch Townsite and Potlatch Mercantile employees, upon the basis of the evidence adduced at the further hearing, that the former are maintenance workers, concerned primarily with the repair and maintenance of property within the town of Potlatch, that their working schedule differs from that of the logging and mill employees, and that only rarely are they required to perform maintenance work at the Potlatch Unit plant, there being a separate maintenance crew attached to the plant for that purpose; it found that the Potlatch Mercantile employees work for, and are paid on

[14] The Board found it unnecessary to pass upon the question whether the railroad was subject to the Railway Labor Act and hence not an employer under Section 2 (2) of the National Labor Relations Act (55 N. L. R. B. 255, 261, note 19, p. 99, *infra*).

a salary basis by, the Potlatch Mercantile Company, and that their duties are confined to the store which that company operates (55 N. L. R. B. 255, 261–262, pp. 99–100, *infra*). The Board also found that both these groups of employees were specifically excluded from the units covered by the local contracts between the Company and the A. F. of L. (*id.* at p. 262, pp. 99–100, *infra*). It therefore concluded that there was no reason for disturbing its findings as to the exclusions of the above groups of employees from the appropriate unit (*ibid.*). In addition to the foregoing, the Board reconsidered the A. F. of L.'s claim that it was entitled to an opportunity to point out defects and weaknesses in the field examiner's statements as to C. I. O. authorization cards, and found that for reasons already stated in the Decision and Direction of Election this contention was without merit (55 N. L. R. B. 255, 261, p. 98, *infra;* see pp. 10–11, *supra*). Finally, the Board pointed out that although the issue was not specifically raised in either its motion or objections, the A. F. of L. presented evidence at the further hearing which showed that the militarized watchmen and guards employed by the Company had been demilitarized since January 10, 1944, and that the evidence showed further that watchmen, at least, are still deputized by the county. The Board considered the impact of this evidence upon its previous unit finding and determined that these facts presented no reason for disturbing its exclusion of deputized

as well as militarized guards and watchmen from the appropriate unit (55 N. L. R. B. 255, 262, p. 100, *infra*).

Upon the basis of all of the foregoing and the entire record, the Board concluded that the objections of the A. F. of L. to the election should be overruled, and that no reason was presented for disturbing its previous Decision and Direction of Election. It accordingly denied the A. F. of L.'s motion to vacate the Decision and Direction of Election, and the election, and it certified the C. I. O. as the exclusive representative of the employees in the appropriate unit (R. 10). On March 8, 1944, the A. F. of L. filed a motion for reconsideration of the Board's supplemental decision and certification, which the Board denied (R. 10).

On March 21, 1944, the A. F. of L. filed a complaint in the United States District Court for the District of Columbia, against the members of the Board individually and in their official capacities, praying for a mandatory injunction requiring them to set aside the Board's certification of representatives, dated March 4, 1944, and, in the alternative, for a declaratory judgment that the certification was void (R. 1–12). The complaint alleged in substance that the hearings held in the course of the proceedings culminating in the certification satisfied neither the due process clause of the Constitution nor the statutory requirement of a hearing contained in Section 9 (c)

of the National Labor Relations Act, and that the certification accordingly unlawfully deprived the A. F. of L. of valuable bargaining rights. On March 29, 1944, the members of the Board filed their motion to dismiss the complaint on the grounds that the district court was without jurisdiction of the subject matter of the complaint, and alternatively, that the complaint on its face failed to state a cause of action entitling petitioners to the relief requested (R. 13–15). On April 5, 1944, the district court denied the Board's motion (R. 16–17).

Thereafter, the Board, pursuant to Section 17–101 of the District of Columbia Code, filed its petition in the court below for the allowance of a special appeal from the order of the district court. On May 15, 1944, the court below entered its order allowing the special appeal (R. 18), and on July 24, 1944, upon consideration of the appeal, reversed the order of the district court and remanded the cause to that court with directions to dismiss the complaint (R. 20–21, 24). One judge dissented (R. 21–24).

SUMMARY OF ARGUMENT

I

Congress did not intend to permit review by district courts of Board certifications of labor organizations as the bargaining representatives of employees under Section 9 of the Act. This

is shown, first, by the scheme of the statute. The single situation in which court review of representation proceedings under Section 9 is referred to in the Act is that described in Section 9 (d), which provides for review by the circuit courts of appeals of certification proceedings after the Board has entered an order under Section 10 (c) based in whole or in part upon facts certified following an investigation pursuant to Section 9 (c).

The legislative history also shows that Congress intended to preclude review of certification proceedings except in the single situation already described (S. Rep. No. 573, 74th Cong., 1st Sess., pp. 5–6, 14; H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 6–7, 23; 79 Cong. Rec. 7658). There is no warrant for saying that the review provisions of the Act were intended to be exclusive only when employers seek review and not when labor organizations do so.

The correctness of the view that Congress did not intend district courts to have jurisdiction to review representation proceedings under the Act is reinforced by this Court's decision in *Switchmen's Union of North America* v. *National Mediation Board*, 320 U. S. 297, arising under the Railway Labor Act. Constitutional questions aside, there is no basis for a distinction, such as the A. F. of L. apparently seeks to make, based upon the nature of the respects in which the certification is

claimed to be defective. Whether, as in the instant case, the claim is that the hearing granted is inadequate, or whether, as in the *Switchmen's* case, it is that the unit is inappropriate, or whether the challenge is to some other failure to comply with the statute, the same considerations apply.

The foregoing interpretation of the Act raises no substantial question as to its constitutionality. It is well settled that due process of law does not necessarily require the exercise of the judicial power, particularly where, as in the case of the Board's certifications under Section 9 of the Act, an administrative hearing is provided. The decision in the *Switchmen's* case is authority for the view that no constitutional impediment exists to the power of Congress to deny judicial review of certifications.

II

The complaint fails on its face to raise any constitutional question, for it appears from the allegations, read in the light of the uncontroverted facts appearing in the Board's decisions, that the procedure followed by the Board that led up to the certification fully satisfied the due process requirements of the Fifth Amendment.

It is well settled that the due process clause guarantees no particular form of procedure, but requires only such hearing and notice as is commensurate with the necessities of the particular case and the character of the rights affected. It

was appropriate for the Board to proceed in the fashion it did in the particular circumstances of this case. The A. F. of L. made no showing, in response to the order to show cause, that further hearing before the election was necessary. Moreover, it is obvious, and the A. F. of L. makes no contrary claim, that before the Board made its final determination of the case, the A. F. of L. had full opportunity to present to the Board all relevant evidence bearing upon the controversy as to representation. Thus, the A. F. of L.'s due process allegations, at best, amount to no more than an assertion that although the hearings were commensurate with the necessities of the case and were fully adequate to permit it to make its contentions known and to support them by evidence and argument, they were nevertheless short of due process because held at one stage of the proceedings before final determination instead of at another. This Court has repeatedly held, however, that due process does not require that a hearing be held at any particular time.

ARGUMENT

I

CONGRESS DID NOT INTEND TO PERMIT REVIEW OF BOARD CERTIFICATONS BY DISTRICT COURTS

This Court held, in *American Federation of Labor* v. *National Labor Relations Board*, 308 U. S. 401, 411, that Congress, making a deliberate choice of conflicting policies, intended that circuit

courts of appeals, granted reviewing powers under Section 10 of the National Labor Relations Act, should not have the power to review representation proceedings except as provided in Section 9 (d) in connection with review of orders in unfair labor practice cases in which the order under review is based, in whole or in part upon facts certified in the representation proceeding. The Court intimated no opinion upon, and expressly left open, the question whether the provisions of the Act were also intended by Congress to foreclose judicial review of Board certifications by independent suit in the district courts, and thus to deprive the district courts of some portion of their original jurisdiction conferred by Section 24 of the Judicial Code.[15] It is our con-

[15] There has been sharp disagreement among the lower federal courts on the question. See *Association of Petroleum Workers* v. *Millis et al.* (suit to enjoin holding of election), No. 20854 (N. D. Ohio), unreported, dismissed on July 9, 1941, on ground of lack of jurisdiction; *Sun Ship Employees Association, Inc.* v. *National Labor Relations Board et al.* (suit to review and set aside consent election), No. 3304 (E. D. Pa.), unreported, dismissed on August 4, 1943, for lack of jurisdiction, affirmed on other grounds, 139 F. (2d) 744 (C. C. A. 3); *International Brotherhood of Electrical Workers* v. *National Labor Relations Board* (suit to enjoin holding of election) No. 21994 (N. D. Ohio), unreported, dismissed on September 28, 1943, for lack of jurisdiction; *American Broach Employees Association* v. *National Labor Relations Board et al.* (suit to enjoin holding of election), No. 4242 (E. D. Mich.), unreported, dismissed on June 24, 1944, for lack of jurisdiction; *Spokane Aluminum Trades Council* v. *National Labor Relations Board* (suit to enjoin holding of election) No. 349 (E. D. Wash.), unreported, complaint dismissed on June 14, 1943, on ground that no case

tention that the review procedures of the Act are properly to be interpreted as exclusive.

A. *The statutory provisions.*—The single situation in which court review of representation proceedings under Section 9 is referred to in the Act

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was made out for equitable relief. Without ruling on jurisdiction, the court said that it did not think that the district court had jurisdiction; *International Brotherhood of Electrical Workers* v. *National Labor Relations Board et al.* (suit to enjoin holding of election), 41 F. Supp. 57 (E. D.) Mich.), court held it had jurisdiction. No appeal taken by Board because case became moot due to change in Board policy concerning run-off elections; *American Federation of Labor* v. *Madden et al.* (suit to review certification), 33 F. Supp. 943 (D. D. C.), court held it had jurisdiction. No appeal perfected because case became moot; *Klein* v. *Herrick* (suit to enjoin holding of election), 41 F. Supp. 417 (S. D. N. Y.), court held it had jurisdiction but dismissed complaint on ground suit was premature; *R. J. Reynolds Employees Association, Inc.* v. *National Labor Relations Board et al.* (suit to enjoin holding of election) (M. D. N. C.), unreported, court held on November 9, 1943, that it had jurisdiction and enjoined the Board from holding an election on two particular days, no appeal taken; *Reilly et al.* v. *Millis et al.* (suit to review certification), 52 F. Supp. 172 (D. D. C.), court held it had jurisdiction but dismissed case on other grounds, affirmed 144 F. (2d) 259 (App. D. C.) on still other grounds, petition for certiorari filed on January 29, 1945, No. 884, this Term; *The Brotherhood and Union of Transit Employees of Baltimore* v. *Madden* (suit to enjoin holding of election), 15 L. R. R. 519 (D. Md.), court held on November 27, 1944, that it had jurisdiction, reversed by Fourth Circuit Court of Appeals on January 29, 1945, 15 L. R. R. 806; *Inland Empire District Council Lumber & Sawmill Workers Union et al.* v. *Graham et al.* (suit to enjoin holding of election in instant case), 53 F. Supp. 369 (W. D. Wash.), dismissed on ground suit was premature. Court held it had jurisdiction.

is that described in Section 9 (d), which provides for review of certification proceedings by the circuit courts of appeals after the Board enters an order under Section 10 (c), based in whole or in part upon facts certified following an investigation pursuant to Section 9 (c). Thus, Section 9 (d) provides:

> Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

Moreover, in the situations in which Congress did expressly provide for review of Board action in the Act, it carefully limited the review to review by the circuit courts of appeals (Sections 10 (f) and 9 (d)).[16]

[16] Under Section 10 (e), the Board may also seek enforcement of its orders in the district courts but only "if all the circuit courts of appeals to which application may be made are in vacation."

The fact that Congress thus made certifications judicially reviewable in a single situation and provided for their court review in no other case, and that it carefully limited review to the circuit courts of appeals, shows that Congress intended that no other review of them should be permitted. This is the natural construction of the Congressional action.[17] And it is hardly possible that Congress, which was so careful thus to limit such review of Board action, should have intended to permit general review of certification proceedings by the district courts.[18] Accordingly, we submit, the statute on its face discloses an intention on the part of Congress to prevent court review of certification proceedings except in the single instance described in the statute in which provision for such review is made. Cf. *American Federation of Labor* v. *National Labor Relations Board*, 308 U. S. 401, 409.

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[17] See *Switchmen's Union of North America* v. *National Mediation Board*, 320 U. S. 297, 301, 305–306; *Arnson* v. *Murphy*, 109 U. S. 238; *Wilder Mfg Co.* v. *Corn Products Refining Co.*, 236 U. S. 165, 174–175; *United States* v. *Babcock*, 250 U. S. 328, 331; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 404.

[18] See *Madden* v. *The Brotherhood and Union of Transit Employees of Baltimore*, decided January 29, 1945 (C. C. A. 4), 15 L. R. R. 806, 808, in which the court stated: "It is hardly posible that Congress should have intended to permit review by District Courts of 9 (c) proceedings while so carefully limiting review of such proceedings in the Circuit Courts of Appeals to cases in which an order under 10 (c) has been entered."

B. *The legislative history.*—The correctness of this view of the Congressional intention is shown by the legislative history. The reports of both the Senate and House Committees interpret Section 9 (d) as precluding review of certification proceedings except as there expressly provided. The Senate Committee Report (S. Rep. No. 573, 74th Cong., 1st Sess., p. 14), after noting the requirement of Section 9 (c) that in any such proceeding a hearing must be held, declares:

> Section 9 (d) makes it absolutely clear that there shall be no right to court review anterior to the holding of an election. An election is the mere determination of a preliminary fact, and in itself has no substantial effect upon the rights of either employers or employees. * * * But if subsequently the Board makes an order predicated upon the election, such as an order to bargain collectively with elected representatives, then the entire election procedure becomes part of the record upon which the order of the Board is based, and is fully reviewable by any aggrieved party in the Federal courts in the manner provided in section 10. And this review would include within its scope the action of the Board in determining the appropriate unit for purposes of the election. This provides a complete guarantee against arbitrary action by the Board.

The House Committee Report (H. Rep. No. 1147, 74th Cong., 1st Sess., p. 23), after pointing out

that the "efficacy" of Public Resolution 44[19] had been "substantially impaired by the provision for court review of election orders prior to the holding of an election," similarly states:

> Section 9 (d) of the bill makes clear that there is to be no court review prior to the holding of the election, and provides an exclusive, complete, and adequate remedy whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an election or other investigation pursuant to section 9 (c). The hearing required to be held in any such investigation provides an appropriate safeguard and opportunity to be heard.

The affirmative intent of Congress to preclude judicial review of certification proceedings, in the absence of any order against the employer based thereon, further appears from the remarks of Senator Walsh of the Senate Committee, in response to questions on the floor of the Senate (79 Cong. Rec. 7658), as follows:

> Mr. COUZENS. The Senator said that Resolution 44 was ineffective. Will he tell us before he concludes why Resolution 44 was ineffective?

[19] Public Resolution 44 (approved June 19, 1934, c. 677, 48 Stat. 1183), was, with Section 7 (a) of the National Industrial Recovery Act (Act of June 16, 1933, c. 90, 48 Stat. 195, 15 U. S. C. 701, *et seq.*), the immediate legislative predecessor of the National Labor Relations Act. See pp. 34–37, *infra*.

Mr. WALSH. It was ineffective, as I think I stated, because of appeals to the courts. In cases where attempts have been made to hold elections the claim has been made that the Board had no legal authority; the cases have been brought into court, and they are in the courts and undecided. * * *

Mr. COUZENS. Would the passage of the pending bill remove the appeals to the courts?

Mr. WALSH. Yes; it would because it limits appeals. It provides for review in the courts only after the election has been held and the Board has ordered the employer to do something predicated upon the results of the election.

The references to Public Resolution 44 (see note 19, p. 33, *supra*), indicate clearly the reasons for the desire of Congress to limit the review of representation investigations to cases in which they are the bases for unfair labor practice orders. Under Section 2 of that Resolution, the old National Labor Relations Board was empowered to hold elections, but "any order" issued under that authority was reviewable in the circuit courts of appeals. The manner in which this review operated in the single year of its life to nullify the election provisions is described at length in the reports of the committees recommending the passage of the National Labor Relations Act. The following passages from those reports, as well as those already quoted, permit of

no doubt as to the design of Congress to remedy the weakness contained in the Act's predecessor. The House Committee Report (H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 6–7) states:

> Public Resolution 44 has not proved much more satisfactory even in its provisions which had some virtue over the preexisting law, namely, the provisions for elections. * * * Any order issued by the Board under the authority of this section may be enforced or reviewed, as the case may be, by petition in the appropriate circuit court of appeals, following the procedure of the Federal Trade Commission Act.
>
> The weakness of this procedure is that under the provision for review of election orders employers have a means of holding up the election for months by an application to the circuit court of appeals. [The report here discusses instances of delay of elections by applications for review.] * * *
>
> The election is but a preliminary determination of fact, and there is no reason why employers should have an opportunity for court review prior to the holding of the election. The ability of employers to block elections has been productive of a large measure of industrial strife. When an employee organization has built up its membership to a point where it is entitled to be recognized as the representative of the employees for collective bargaining, and the employer refuses to accord such

> recognition, the union, unless an election can promptly be held to determine the choice of representation, runs the risk of impairment of strength by attrition and delay while the case is dragging on through the courts, or else is forced to call a strike to achieve recognition by its own economic power. Such strikes have been called when election orders of the National Labor Relations Board have been held up by court review.

The same report further states (*id.* at pp. 22–23):

> Where there are contending factions of doubtful or unknown strength, or the representation claims of the only organized group in the bargaining unit are challenged, there exists that potentiality of strife which the bill is designed to eliminate by the establishment of this machinery for prompt, governmentally supervised elections.

The Senate Committee Report (S. Rep. No. 573, 74th Cong., 1st Sess., pp. 5–6) states, under the heading "WEAKNESSES IN EXISTING LAW":

> *Obstacles to elections.*—Under Public Resolution 44, any attempt by the Government to conduct an election of representatives may be contested *ab initio* in the courts, although such election is in reality merely a preliminary determination of fact. This means that the Government can be delayed indefinitely before it takes the first step toward industrial peace. After almost a year not a single case, in which a com-

pany has chosen to contest an election order of the Board, has reached decision in any circuit court of appeals.

This break-down of the law is breeding the very evil which the law was designed to prevent. During the past year and a half the country has lived under the constant shadow of actual or impending warfare in factory and in mine. A large portion of this strife, which falls so heavily upon the general public, may be attributed to the evils enumerated above.

While, as appears from these reports, Congress apparently had foremost in its mind an intention to prohibit appeals to the courts prior to the holding of elections, it is clear that review of certifications was also intended to be precluded. See *American Federation of Labor* v. *National Labor Relations Board*, 308 U. S. 401. Thus, the reports construe Section 9 (d) as excluding review in every situation except the one therein provided. The statement of Senator Walsh to which reference has been made is to the same effect. Moreover, if the provision excludes review prior to elections it is exclusive in regard to any review; in the absence of any language suggesting a distinction the provision cannot be construed as exclusive for one purpose and as not exclusive for another.

Further reason for the view that review of certifications as well as of directions of elections was intended to be prohibited lies in the fact that review of certifications would be subject to the

same objection as motivated the prohibition of review prior to the holding of elections. This objection was that such review would result in delays in preventing employers from engaging in unfair labor practices (H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 6–7, 23; S. Rep. No. 573, 74th Cong., 1st Sess., pp. 5–6). If certifications were reviewable, it would be possible, just as in the case of directions of hearings or elections, for employers or competing labor organizations or even, perhaps, for individual employees, by filing appeals and applications for stays, to prevent the Board from proceeding under Section 10 pending final decision as to the validity of the certification.[20] And before such final decision it might well be that, due to the employer's continued violations of the Act or some other reason, the certified representative would have lost its majority or that a further investigation under Section 9 would be required. This investigation, too, would be subject in turn to review. Thus the collective bargaining provision of the Act (Section 8 (5)) might, in large part, be rendered inoperative.

There is no warrant for the view that Section 9 (d) was intended to be applicable primarily to employers and that Congress did not intend it to

[20] During the fiscal year ended June 30, 1944, the Board issued 1,468 certifications. National Labor Relations Board, *Ninth Annual Report* (Gov't Print. Off., 1944), p. 83. In the previous fiscal year the Board issued 1,243 certifications. National Labor Relations Board, *Eighth Annual Report* (Gov't Print. Off., 1943), p. 92.

limit review on petition of labor organizations, since a review by way of a proceeding under Section 10 of the Act might not be open to the latter. It is true that appeals by employers had focused attention on the need for preventing the delays occasioned by resort to the courts. But it is clear that the harm which Congress sought to avoid would be the same regardless of who might be responsible for the particular appeal. Moreover, as stated in this Court's opinion in the *American Federation of Labor* case (308 U. S. at 411, note 4), "Congress apparently recognized that representation proceedings under Section 9 (c) might involve rival unions."[21] Indeed in the very cases to which Congress adverted as illustrative of the delays resulting from judicial review (see H. Rep. No. 1147, pp. 6–7), separate suits had been brought by the employers and labor organizations with which the employers were already bargaining to enjoin action proposed to be taken by the Board at the instance of rival

[21] The Senate Committee Report, in the portion quoted, *supra*, p. 32, states, as a reason for the exclusiveness of the provisions in Section 9 (d), that "An election is the mere determination of a preliminary fact, and in itself has no substantial effect upon the rights of *either employers or employees*." [Italics supplied.] That Congress must have contemplated the possibility of appeals by labor organizations is further indicated by the statement of the House Committee (H. Rep. No. 1147, 74th Cong., 1st Sess., p. 22), quoted by this Court, that questions of representation would "ordinarily arise as between two or more bona fide organizations competing to represent the employees" (308 U. S. at 412, note 4).

labor organizations.[22] Furthermore, Section 9 (d) cannot be interpreted differently according to whether an employer or a labor organization seeks review. Whatever may have been the motives of Congress in barring review of representation cases unless the facts therein became in whole or in part support for an order under Section 10, review was nevertheless precluded.

We submit, therefore, that Congress, in foreclosing a review of certifications except as specified in Section 9 (d), appears clearly to have acted upon " 'the policy that the greater good is sometimes served by making certain classes of decisions final and ending litigation, even though in a particular case the individual is prevented by review from correcting some error which has injured him' " (*Crane* v. *Hahlo,* 258 U. S. 142, 148).[23]

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[22] *The Firestone Tire & Rubber Co.* v. *National Labor Relations Board* (Nos. 6957, 6967, 6969; C. C. A. 6); *The B. F. Goodrich Co.* v. *National Labor Relations Board* (Nos. 6958, 6968, 6970; C. C. A. 6). The suits were rendered moot by *Schechter Corp.* v. *United States,* 295 U. S. 495, holding the N. I. R. A. invalid.

[23] In this connection, it may be noted that in 1939 Senator Walsh introduced a bill (S. 1000, 76th Cong., 1st Sess.), sponsored by the American Federation of Labor, which would have amended Section 9 (d) to provide that "In any proceeding under section 9 which is not incidental to a proceeding under section 10, certification or denial thereof * * * shall constitute a final order and shall be reviewable upon the petition of any labor organization aggrieved * * *." During the hearings on that bill Mr. Padway, general counsel of the American Federation of Labor, testified before the Senate Committee on Education and Labor (Hearings on S. 1000, pt. 6, pp. 1148–1155), in substance,

C. *This Court's decision in the* Switchmen's *case.*—The correctness of our view that Congress did not intend to permit the broad grant of jurisdiction to federal district courts of all "suits and

that the amendment was needed because under the present Act, if an employer accepted a certification, a rival labor organization apparently had no right of review at all.

The Board filed with the Committee a report on the bill in which it stated that (Hearings, pt. 3, pp. 583, *et seq.*) the Act presently permits no direct court review of a certification and that in practice, therefore, under certain circumstances labor organizations apparently cannot obtain a court review of Board certifications. The Board proceeded to point out, however, that to permit such review would mean simply that "where two or more labor organizations are involved, the collective bargaining machinery of the act could not function" (Hearings, *supra*, p. 584); and that—"It is plain that the right to judicial review now proposed would enmesh the Board in litigation of overwhelming proportions and bring about delays due to lengthy court proceedings far surpassing those sought to be avoided by Congress when the act was passed. Congress then realized, upon the basis of a mere handful of election cases tied up in the courts by judicial review, that a serious menace to industrial peace existed. But the evil effect then being witnessed is insignificant in comparison with the results of judicial review in any appreciable proportion of the great number of representation cases being handled by the Board. [During the fiscal year ended June 30, 1944, the Board held over 4,700 elections and pay-roll checks, National Labor Relations Board, *Ninth Annual Report* (Gov't Print. Off., 1944), p. 20, and in the previous fiscal year it conducted about 4,150 elections and pay-roll checks, National Labor Relations Board, *Eighth Annual Report* (Gov't Print. Off., 1943), p. 95.] It is obvious that the present proposal, like the former court review which the present act prohibits, will increasingly breed the very evil which the law was designed to prevent, contrary to the public interest in the prompt determination of facts upon which industrial peace depends" (*id.* at p. 586). The Committee did not report the bill.

proceedings arising under any law regulating commerce" (Section 24 (8) of the Judicial Code, 28 U. S. C. 41 (8)) to be invoked in the case of representation proceedings under the National Labor Relations Act is, we submit, strongly reinforced by this Court's decision in *Switchmen's Union of North America* v. *National Mediation Board*, 320 U. S. 297.[24]

That case arose upon a suit by the Switchmen's Union in the district court to cancel the National Mediation Board's certification under Section 2, Ninth, of the Railway Labor Act, of a rival union, the Brotherhood, as the statutory representative of employees whom the Switchmen's Union claimed to represent as a separate unit. Section 2, Ninth, contains provisions for certification of representatives of railroad employees, which are in many respects analogous to those contained in Section 9 of the National Labor Relations Act. It provides:

> If any dispute shall arise among a carrier's employees as to who are the repre-

[24] See also *General Committee* v. *M.-K.-T. R. Co.*, 320 U. S. 323; *General Committee* v. *So. Pac. Co.*, 320 U. S. 338; *Brotherhood of Railway Clerks* v. *United Transport Service Employees*, 320 U. S. 715, reversing *per curiam*, 137 F. (2d) 817 (App. D. C.); *Order of Railway Conductors* v. *National Mediation Board*, 141 F. (2d) 366, 367 (App. D. C.), certiorari dismissed December 11, 1944, No. 200, this Term; *United Transport Service Employees* v. *National Mediation Board*, 141 F. (2d) 724, 725 (App. D. C.); *National Federation of Railway Workers* v. *National Mediation Board*, 141 F. (2d) 725, 726 (App. D. C.); cf. *Stark* v. *Wickard*, 321 U. S. 288.

sentatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the

> books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

The Railway Labor Act, like the National Labor Relations Act, contains no provisions expressly authorizing judicial review of certifications although it does contain provisions, as does the latter Act, for review of other types of administrative actions (Sections 3, First (p) and 9, Third (a)).

This Court held that "the District Court did not have the power to review the action of the National Mediation Board in issuing the certificate" (320 U. S. at 300). It stated that (p. 305), by reference to "the type of problem involved and the history of the statute," and the "highly selective manner in which Congress has provided for judicial review of administrative orders or determinations under the Act," the congressional intent as to representation disputes was plain—"the dispute was to reach its last terminal point when the administrative finding was made. There was to be no dragging out of the controversy into other tribunals of law." We submit that the court below correctly held that this holding of this Court was dispositive of the issue of jurisdiction in a suit like the present one.

The "type of problem" involved, which this Court characterized in the *Switchmen's* case, 320 U. S. at 301, as "highly relevant" in determining

the Congressional intention as to review, is the same in both statutes. Cf. *Shields* v. *Utah Idaho Central R. Co.*, 305 U. S. 177 (distinguished in the *Switchmen's case*, 320 U. S. at 306). It is to settle disputes as to the representation of employees for collective bargaining. It is equally vital in each, for the same reasons in each, that there be "no dragging out of the controversy" in the courts (320 U. S. at 305). Moreover, the legislative history, which the Court stated in the *Switchman's* case was also a "highly relevant" consideration (320 U. S. at 301), establishes even more clearly in the case of the National Labor Relations Act than in the case of the Railway Labor Act, the intention of Congress to limit judicial review of representation proceedings under Section 9 (c) of the Act to that afforded in the circuit courts of appeals in connection with the review of orders in unfair labor practice cases based in whole or in part upon certifications issued by the Board in prior representation proceedings. This Congressional history has been reviewed (pp. 31–40, *supra*).

Each statute shows on its face the same "highly selective manner in which Congress has provided for judicial review of administrative orders or determinations under the Act." It may equally well be said of the Labor Relations Act, as this Court said of the Railway Labor Act (320 U. S. at 306), that "when Congress * * * provided for

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judicial review of two types of orders or awards and * * * omitted any such provision as respects a third type, it drew a plain line of distinction. And the inference is strong from the history of the Act that that distinction was not inadvertent." Cf. *American Federation of Labor* v. *National Labor Relations Board*, 308 U. S. 401, 409–411.

The foregoing views were recently approved by the Circuit Court of Appeals for the Fourth Circuit in *Madden* v. *Brotherhood and Union of Transit Employees of Baltimore*, decided January 29, 1945, 15 L. R. R. 806. The case involved an appeal from an order of the district court enjoining the regional director of the National Labor Relations Board from conducting an election ordered by the Board under Section 9 (c) of the Act (59 N. L. R. B., No. 35). The Board had, in the course of the representation proceeding, investigated to determine whether the Brotherhood was a mere continuation of an old organization which the Board had previously found to be company-dominated and had directed to be disestablished in an order enforced by the circuit court of appeals (*National Labor Relations Board* v. *Baltimore Transit Co.* 140 F. (2d) 51 (C. C. A. 4), certiorari denied, 321 U. S. 795).[23] Upon finding that the Brother-

[23] Where it has appeared in a representation case that a labor organization seeking a place on the ballot was a successor of a labor organization which had been found by the Board to be company dominated in prior unfair labor practice

hood was merely a continuation of the old, unlawful organization, the Board had ordered that it not be placed upon the ballot in the election which it directed for the purpose of determining the bargaining representative. The district court, on petition of the Brotherhood, had enjoined the holding of this election on the ground that the Board had acted in excess of the power conferred upon it by Congress in Section 9 of the Act.

proceedings, it has been the Board's practice to give notice to all parties in the Section 9 proceeding that it would try, and it thereafter has tried, the issue of successorship in the representation case. *Matter of Dow Chemical Co.*, 32 N. L. R. B. 660; *Matter of R. G. LeTourneau, Inc.*, 36 N. L. R. B. 774; *Matter of Western Union Telegraph Co.*, 36 N. L. R. B. 812; *Matter of Swift & Co.*, 41 N. L. R. B. 1251; *Matter of H. E. Fletcher Co.*, 41 N. L. R. B. 420; *Matter of Wilson & Co., Inc.*, 45 N. L. R. B. 831; *Matter of J. Greenebaum Tanning Co.*, 49 N. L. R. B. 787; *Matter of New York Merchandising Co., Inc.*, 50 N. L. R. B. 41; *Matter of Phillips Petroleum Co.*, 52 N. L. R. B. 632; *Matter of Baltimore Transit Co.*, 59 N. L. R. B., No. 35. Also, in cases where it fortuitously appeared during the course of the representation proceeding that a labor organization seeking a place on the ballot was organized under governing rules by the terms of which the employer necessarily dominated the organization, or it appeared that the organization was formed by supervisory employees, the Board has refused to permit that organization to appear on the ballot. *Matter of Douglas Aircraft Co., Inc.*, 53 N. L. R. B. 486; *Matter of Phelps Dodge Corp.*, 6 N. L. R. B. 624; *Matter of Toledo Stamping & Mfg. Co.*, 55 N. L. R. B. 865. See also *Matter of Larus & Brother Co., Inc.*, Cases Nos. 5–R–1413, 5–R–1437, in which the Board recently ordered a certified organization to show cause why the certification should not be set aside on the ground, alleged by another union, that it does not admit Negro members of the bargaining unit to equal membership and does not bargain in their behalf as part of the unit.

The circuit court of appeals reversed the order of the district court on the ground that that court was without jurisdiction to entertain the Brotherhood's suit. It pointed out that (15 L. R. R. 806, 807):

> To enjoin the action of the Board on such ground, however, is to review proceedings taken by it in the exercise of power conferred by Congress and to reverse the Board's decision for error of law;

and it held that—

> * * * it is perfectly clear, we think, that such power of review has not been conferred on the courts. Only when an order of the Board is made pursuant to section 10 (c), and such order is based in whole or in part upon facts certified following an investigation pursuant to 9 (c), is judicial review of 9 (c) proceedings authorized; and in such case review is authorized by the Circuit Courts of Appeals, not by the District Courts.

The court cited with approval the decision of the Court of Appeals for the District of Columbia in the case at bar, noted that the decision was grounded upon the decision of this Court in the *Switchmen's* case, and stated that it likewise regarded the *Switchmen's* decision as controlling in the case of the Brotherhood.

Constitutional questions aside,[26] there is no warrant for a distinction, so far as judicial review of

[26] We show below, in Point II, that no constitutional question is presented by this case.

certifications is concerned, based upon the nature of the respects in which the administrative proceedings are claimed to be defective. In the case at bar the challenge to the proceedings is based upon the nature and timing of the hearing which the Board provided. The A. F. of L. claims that this hearing did not comport with the requirements of the statute and that the Board's action therefore was not within "the scope of the authority committed to it by Congress" (Pet. 18). In essence, this is no different than the contention made in the *Baltimore Transit* case, *supra*, pp. 46–48, that the Board had no power to investigate the question of company domination of the Brotherhood in the Section 9 proceeding, or a contention that the Board failed to find an appropriate unit, or that it improperly handled the election, or that it improperly excluded material evidence at the hearing. In all of these cases, too, it could fairly be said that the Board did not act within the scope of its statutory authority. Indeed, this was precisely the ground upon which the district court enjoined the election in the *Baltimore Transit* case. But at least so long as the alleged infirmity—inadequacy of hearing here—is not so great as to assume constitutional stature, there is no reason for reading an exception into the statutory provisions which contemplate finality, with but one qualification (pp. 29–30, *supra*), for the Board's certification.

The same considerations which impelled Congress to protect representation proceedings against judicial interference obviously apply with equal force in all such cases, no matter what the specific ground for attack may be. The protection which Congress afforded would be illusory indeed if it were to be denied whenever it was asserted that the Board had exceeded its statutory authority. It is noteworthy in this regard that in the *Firestone* and *Goodrich* cases (note 22, p. 40, *supra*), to which Congress adverted as illustrative of the evils resulting from judicial review which it sought to avert under this Act, it was alleged by the labor organizations seeking review that the orders of the old Board deprived them of their property without due process of law in that their contractual relations with the employers were being impaired "without opportunity to the Petitioners or the employees * * * to be heard adequately or to present testimony and argument to any Tribunal" (Petition of the Goodrich Co-operative Plan and others, p. 15 (par. e), No. 6970 (C. C. A. 6)), and that they were not given "any day in Court," referring to the alleged denial by the Board of adequate notice of hearing (Brief of Employees' Conference Plan of the Firestone Tire & Rubber Co., et al., pp. 65–66; see also Petition, p. 12, par. 11, No. 6969 (C. C. A. 6)). And in the *Switchmen's* case it was alleged in the district court that the Mediation Board was without jurisdiction under the

Railway Labor Act to proceed with its investigation and certification in that case because the documents seeking to invoke that Board's services "conclusively disclosed that no bona fide dispute in fact existed within the meaning of the Railway Labor Act" (Record, *Switchmen's* case, No. 48, October Term 1943, pp. 20–21). This allegation amounted essentially to an assertion that the Mediation Board had proceeded outside the scope of its authority but this Court nevertheless held that the district court had no jurisdiction to review the Board's action. See also *Brotherhood of Railway Clerks* v. *United Transport Service Employees*, 320 U. S. 715, reversing *per curiam*, 137 F. (2d) 817 (App D. C.); *Order of Railway Conductors* v. *National Mediation Board*, 141 F. (2d) 366, 367 (App. D. C.), certiorari dismissed December 11, 1944, No. 200, this Term.

The recent decisions of this Court in *Tunstall* v. *Brotherhood of Locomotive Firemen, etc.*, No. 37, this Term, and *Steele* v. *Louisville & Nashville Railroad Company et al.*, No. 45, this Term, decided December 18, 1944, do not support the A. F. of L.'s alleged cause of action.[27] In those cases, as the Court pointed out in the *Steele* opinion, the plaintiffs' suits asserted a duty, which the Court held the Railway Labor Act imposed upon the certified representative, to represent all members of the craft or group "without hostile dis-

[27] Cf. also, *Stark* v. *Wickard*, 321 U. S. 288.

crimination, fairly, impartially, and in good faith." The *Steele* case, slip-sheet opinion, p. 9. The violation of this duty was not determinable, as the Court stated (*id.* at p. 9), under the administrative scheme set up in the Railway Labor Act, and the "right [thus created] would be sacrificed or obliterated if it were without the remedy which courts can give for breach of such a duty or obligation * * *" (*id.* at p. 11). The Court held that in these circumstances the statute must be construed as contemplating "resort to the usual judicial remedies of injunction and award of damages when appropriate for breach of that duty" (*id.* at p. 12).

Thus, the *Tunstall* and *Steele* cases present situations which the Court expressly distinguished in the *Switchmen's* case. The Court stated (the *Switchmen's* case (320 U. S. at 300–301)):

> If the absence of jurisdiction of the federal courts meant a sacrifice or obliteration of a right which Congress had created, the inference would be strong that Congress intended the statutory provisions governing the general jurisdiction of those courts to control. That was the purport of the decisions of this Court in *Texas & New Orleans R. Co.* v. *Brotherhood of Clerks*, 281 U. S. 548, and *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515. In those cases it was apparent that but for the general jurisdiction of the federal courts there would be no remedy to enforce

the statutory commands which Congress had written into the Railway Labor Act. The result would have been that the "right" of collective bargaining was unsupported by any legal sanction. That would have robbed the Act of its vitality and thwarted its purpose. Such considerations are not applicable here. The Act in § 2, Fourth writes into law the "right" of the "majority of any craft or class of employees" to "determine who shall be the representative of the craft or class for the purposes of this Act." That "right" is protected by § 2, Ninth which gives the Mediation Board the power to resolve controversies concerning it and as an incident thereto to determine what is the appropriate craft or class in which the election should be held. See *Brotherhood of Railroad Trainmen* v. *National Mediation Board,* 88 F. 2d 757; *Brotherhood of Railroad Trainmen* v. *National Mediation Board,* 135 F. 2d 780. A review by the federal district courts of the Board's determination is not necessary to preserve or protect that "right."

In the case at bar, just as in the *Switchmen's* case, the considerations applicable in the *Tunstall* and *Steele* cases are not present. The Labor Relations Act, in Section 9 (a) writes into law the right of "the majority of the employees" to designate or select their "exclusive representatives" for collective bargaining purposes. That right is protected by Section 9, subsections (b) and (c), which gives the Board power to resolve controversies

concerning the selection of representatives. Here, as in the *Switchmen's* case, "a review by the federal district courts of the Board's determination is not necessary to preserve or protect that 'right'." The *Switchmen's* case, *supra.*

D. *The foregoing interpretation of the Act raises no substantial question as to its constitutionality.*—The foregoing interpretation of the Act, denying court review of Board certifications except in the limited manner expressly provided in Section 9 (d), raises no substantial question as to its constitutionality. "That due process of law does not necessarily require the interference of the judicial power is laid down in many cases and by many eminent writers upon the subject of constitutional limitations. * * * 'There is nothing in these words, * * * that necessarily implies that due process of law must be judicial process.'" *Public Clearing House* v. *Coyne,* 194 U. S. 497, 508–509. "The authority for a judicial examination of the validity of the [administrative] action is found in the existence of courts and *the intent of Congress* * * *" (italics supplied). *Stark* v. *Wickard,* 321 U. S. 288, 308. See also *American Federation of Labor* v. *National Labor Relations Board,* 308 U. S. 401, in which this Court determined whether judicial review was available by "analyzing the provisions of the statute in order to ascertain the true meaning * * *." (*id.* at p. 408).

That the Fifth Amendment does not necessarily require that there be opportunity for judicial review of Board certifications under Section 9 of the National Labor Relations Act is particularly clear in view of the provision of Section 9 (c), which requires a hearing before the Board. As this Court said in *Reetz* v. *Michigan*, 188 U. S. 505, 507, "* * * we know of no provision in the Federal Constitution which forbids a State from granting to a tribunal, whether called a court or a board of registration, the final determination of a legal question. * * * *Due process is not necessarily judicial process.*" [Italics supplied.] See, also, *Public Clearing House* v. *Coyne*, *supra*; *Butte, Anaconda & Pacific Ry. Co.* v. *United States*, 290 U. S. 127, 136, 142–143; *United States* v. *Ju Toy*, 198 U. S. 253, 263; *Passavant* v. *United States*, 148 U. S. 214, 219, 222; *Barry* v. *Hall*, 98F. (2d) 222, 225 (App. D. C.); cf. *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337, 342, 343; *Crane* v. *Hahlo*, 258 U. S. 142, 147; *United States* v. *Los Angeles R. R. Co.*, 273 U. S. 299, 309–310, 313, 314.

The decision of this Court in the *Switchmen's* case disposes of any constitutional impediment to the denial of judicial review under the circumstances of this case. It was there held that Congress could deny judicial review of certifications under the Railway Labor Act. There is no requirement that the Railway Mediation Board hold

a hearing before it issues its certifications under Section 2, Ninth; Section 9 (c) of the National Labor Relations Act, on the other hand, requires the National Labor Relations Board to provide for an "appropriate hearing" in certification cases. It follows, therefore, *a fortiori*, that the Due Process Clause is not violated by Congressional denial of judicial review of certifications under the National Labor Relations Act.

In the *Switchmen's* case this Court said (320 U. S. at 303):

> The fact that the certificate of the Mediation Board is conclusive is of course no ground for judicial review. *Great Northern Ry. Co.* v. *United States,* 277 U. S. 172, 182. Congress has long delegated to executive officers or executive agencies the determination of complicated questions of fact and of law. And where no judicial review was provided by Congress this Court has often refused to furnish one even where questions of law might be involved. See *Louisiana* v. *McAdoo,* 234 U. S. 627, 633; *United States* v. *George S. Bush & Co.,* 310 U. S. 371; *Work* v. *Rives,* 267 U. S. 175; *United States* v. *Babcock,* [250 U. S. 328]. We need not determine the full reach of that rule. See *Bates & Guild Co.* v. *Payne,* 194 U. S. 106; *Houston* v. *St. Louis Independent Packing Co.,* 249 U. S. 479. But its application here is most appropriate by reason of the pattern of this Act.

We submit that this is equally true of the pattern, history, and purposes of the National Labor Relations Act.

II

THE COMPLAINT SHOWS ON ITS FACE THAT THE PROCEDURE FOLLOWED BY THE BOARD AFFORDED THE A. F. OF L. A HEARING WHICH SATISFIED DUE PROCESS REQUIREMENTS

It appears from the face of the A. F. of L.'s complaint, and from the uncontroverted facts hereinabove described and appearing in the Board's decisions (see note 2, p. 3, *supra*), that the procedure followed by the Board which led up to the certification fully satisfied the Due Process requirements of the Fifth Amendment to the Constitution. Therefore, no constitutional question is involved in this case.

It is well settled that the Due Process Clause guarantees no particular form of procedure—"the requirements are not technical" (*Morgan* v. *United States*, 298 U. S. 468, 481)—but goes to the protection of substantial rights and requires only such hearing and notice as is commensurate with the necessities of the particular case and the character of the rights affected. *Buttfield* v. *Stranahan*, 192 U. S. 470, 496–497; *National Labor Relations Board* v. *Mackay Radio & Tel. Co.*, 304 U. S. 333, 350, 351; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337, 342, 343; *United States* v. *Ju Toy*, 198 U. S. 253, 263; *C. B. & Q. Railroad*

v. *Chicago*, 166 U. S. 226, 235; *Phillips* v. *Commissioner*, 283 U. S. 589, 596–597.[28] It is obvious, we think, that the procedures followed by the Board in the instant case meet this test.

Here, it is clear, and the A. F. of L. makes no contrary claim, that before the Board made its final determination of the case—the certification,[29] the A. F. of L. had had full opportunity to present to the Board all relevant evidence bearing upon the investigation and to be fully heard. There is no claim that at either of the two hearings directed by the Board at which evidence was taken, the A. F. of L. was improperly limited in adducing evidence, nor is it claimed that the A. F. of L. was in any way limited in respect to the showing it was permitted to make on the return of the Board's notice to show cause. The A. F. of L.'s whole complaint is based upon the thesis that due process required the Board as a matter of inexorable right, when the C. I. O. requested certification the second time, automati-

[28] Undoubtedly, this is all that is intended by the requirement in Section 9 (c) that the Board conduct an "appropriate" hearing. "The hearing required to be held in any such investigation [under Section 9 of the Act] provides an appropriate safeguard and opportunity to be heard." Report of the House Committee on Labor (H. Rep. No. 1147, 74th Cong., 1st Sess., p. 23).

[29] It is settled that a direction of election is but an intermediate step and a certification is the final step in representation proceedings under Section 9. *National Labor Relations Board* v. *International Brotherhood of Electrical Workers*, 308 U. S. 413, 414–415.

cally to set the matter down for another hearing to adduce further evidence, instead of first requiring the A. F. of L., as it did, to show that there was a need for such a further hearing. This thesis rests, in turn, upon the A. F. of L.'s notion that the "issues" at the time of the first hearing were different than they were when the C. I. O. requested the company-wide unit, and that the second hearing, held after the election had been conducted, was inappropriate as a substitute for the hearing which it says should have been provided at an earlier stage of the proceedings. We think these contentions are palpably without merit.

During the first hearing, the A. F. of L. had opposed the C. I. O.'s request for certification as the representative of the Company's employees, on the ground that the units of three plants which the C. I. O. proposed were inappropriate because these groups of employees were but a part of a large group, consisting of all of the Company's employees, on whose behalf the A. F. of L. already had established bargaining relationships with the employer, The Board had agreed with the A. F. of L. The C. I. O.'s second petition, filed three days later, obviously was but an acquiescence in this position. Moreover, at the first hearing, the A. F. of L. presumably had fully advanced whatever contentions it desired to make as to the effects of its contracts, the inclusion or

exclusion from the unit of fringe groups of employees, the appropriate pay roll for eligibility to vote in any election, and other matters affecting the method of conducting the balloting." Further, contrary to the A. F. of L.'s present contention, the "issues" involved in the second petition were not substantially different from those involved in the first petitions. The controversy still was, basically, a contest between the A. F. of L. and the C. I. O. for collective bargaining representation of the employees of the Company, and the matters for the Board to determine were essentially the same in each instance. As has been stated, it was to be presumed that the parties to the controversy had made their respective positions clear in the first hearing.

In this situation it was entirely appropriate, we submit, for the Board to proceed as it did, to propose to treat the second petition as merely in the nature of an amendment to the earlier proceedings, and to proceed to a redetermination of the representation dispute on the record already made unless the parties showed why that record was inadequate and why further testimony should

[30] The A. F. of L. obviously could not know at the time of this hearing that the Board would dismiss the C. I. O. petitions on the ground of inappropriate unit. Accordingly, it must be presumed that it had made its position clear on all matters affecting the election which might be ordered by the Board and that it had adduced whatever available evidence it desired to support its contentions.

be taken. Upon the return of the notice to show cause, the A. F. of L. opposed the proposed procedure generally but neither alleged any facts showing why the proposed procedure was in fact inappropriate in any respect nor pointed to any material evidence which it desired to adduce or to any other need for a hearing to receive further evidence. The A. F. of L. complained only that the decision should not be based upon the field examiner's report and investigation, that the Board had no authority to set aside an existing contract, and that the employees at the Potlatch Unit plant and the Rutledge Unit plant would be deprived of an opportunity to demonstrate their bargaining status. These contentions primarily involved questions of law and administrative policy which had long since been settled, and any factual issues embraced had been fully canvassed at the first hearing (see pp. 8–12, *supra*). In these circumstances, this opportunity to oppose the proposed procedure and to show the necessity for the taking of further evidence, was all that an "appropriate hearing" of the controversy as to representation required. Indeed, for the Board to have proceeded in this situation to set the matter down for taking of further evidence, when on the face of things a hearing for that purpose was not needed, would have been inappropriate, as a waste of time and of public and private funds.

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But the Board did more than provide the foregoing "appropriate hearing." When, subsequently, in the course of the Board's investigation, after an election had been had among the employees, the A. F. of L. protested against the procedures followed and the conduct of the ballot, the Board ordered that a formal hearing be had upon the matters raised in the A. F. of L.'s protest. At this hearing the A. F. of L. undisputedly was accorded full opportunity to be heard and to adduce all relevant evidence bearing upon all contentions which it desired to raise. Only after this further full hearing was had, did the Board proceed to a final consideration and determination of the case. It cannot be assumed that merely because the Board considered this evidence and the A. F. of L.'s contentions, after the election instead of before, the consideration which it gave to them was any less full, fair, and impartial, and its final determinations any less a reflection of its considered judgment upon the whole record.

It is thus apparent, we think, that the A. F. of L.'s due process allegations amount, at best, to no more than an assertion that although the hearings provided were commensurate with the necessities of the case and were fully adequate to permit the A. F. of L. to make its contentions known and to support them by evidence and argument, they were nevertheless short of due process because held at one stage of the proceedings before final determination instead of at another. The A. F.

of L. suggests (Br. 34–35) that a hearing after the election "would unavoidably and unfairly affect the rights of parties by reason of the announcement of election results and the influence thereof in units which might be later found to be inappropriate." But that has no bearing on this case, for the Board, at its later hearing, found that the determination of the unit and the conduct of the election were, in every way, proper. These findings, the A. F. of L. apparently concedes, are conclusive.

The Constitution is not concerned with ritual which affects no substantial rights. See cases cited pp. 57–58, *supra*. This Court has repeatedly held that a hearing need not be held at any particular time and that it may be held at any time before final judgment is entered. *Opp Cotton Mills* v. *Administrator, Wage and Hour Division*, 312 U. S. 126, 152–153; *Nickey* v. *Mississippi*, 292 U. S. 393, 396; *United States* v. *Illinois Central R. Co.*, 291 U. S. 457, 463; *Wells, Fargo & Co.* v. *Nevada*, 248 U. S. 165, 168; *Wilson* v. *Standefer*, 184 U. S. 399, 415; *Gallup* v. *Schmidt*, 183 U. S. 300, 307. Indeed, this Court has held that due process requirements were met even in situations where no hearings were held before judgment, provided an opportunity to be heard fully was afforded on appeal. *York* v. *Texas*, 137 U. S. 15, 20–21; *American Surety Co.* v. *Baldwin*, 287 U. S. 156, 168; *George Moore Ice Cream Co.* v. *Rose*, 289 U. S. 373, 384.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision below is correct and the decree should be affirmed.

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FEBRUARY 1945.

APPENDIX A

In the Matter of POTLATCH FORESTS, INC. *and* LOCALS 10–358 AND 10–361, INTERNATIONAL WOODWORKERS OF AMERICA, AFFILIATED WITH THE C. I. O.

In the Matter of POTLATCH FORESTS, INC. *and* LOCAL 10–364, INTERNATIONAL WOODWORKERS OF AMERICA, AFFILIATED WITH THE C. I. O.

Cases Nos. R–5373 and R–5374 respectively.—Decided July 13, 1943

[51 N. L. R. B. 288]

DECISION AND ORDER

STATEMENT OF THE CASE

Upon petitions duly filed by Locals 10–358, 10–361, and 10–364, International Woodworkers of America, affiliated with the C. I. O., herein collectively called the C. I. O.,[1] alleging that ques-

[1] The original petitions were filed by Locals 358 and 361, International Woodworkers of America, affiliated with the C. I. O. and by International Woodworkers of America, C. I. O., Local 364. At the hearing the C. I. O. made a motion to change its titles to Locals 10–358, 10–361, 10–364, International Woodworkers of America, affiliated with the C. I. O., and to amend the petitions with regard to the units

tions affecting commerce had arisen concerning the representation of employees of Potlatch Forests, Inc., Lewiston, Idaho, herein called the Company, the National Labor Relations Board consolidated the cases and provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. Said hearing was held at Lewiston, Idaho, on May 14 and 15, 1943. The Company, the C. I. O., and Locals 2679, 2664, 2923, 2766, and 2584, Lumber and Sawmill Workers' Union, chartered by the United Brotherhood of Carpenters and Joiners of America, affiliated with the A. F. of L., by the Northwestern Council Lumber and Sawmill Workers, herein collectively called the A. F. L., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The A. F. L. moved to dismiss the petitions herein on the ground, among others, that the units sought by the C. I. O. were not appropriate. The Trial Examiner reserved ruling upon this motion. For reasons appearing hereinafter, the motion of the A. F. L. is granted. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The A. F. L. submitted a brief and a supplemental brief, which the Board has considered.

Upon the entire record in the case, the Board makes the following:

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sought and the business of the Company. This motion was granted by the Trial Examiner and the petitions were amended in accordance therewith.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Potlatch Forests, Inc., a Maine corporation, is engaged in the general logging, sawmill, mill, and manufacturing business. It cuts timber into logs, saws and mills logs into lumber and lumber products, and sells such products throughout the United States. It owns and operates three subsidiary corporations known as the Forest Development Company, the Washington-Idaho-Montana Railroad, a common carrier, and Wood Briquets, Inc. In addition thereto, it owns and conducts five operations consisting of three mills known as the Potlatch Unit Plant, located at Potlatch, Idaho, the Rutledge Unit Plant, located at Coeur d'Alene, Idaho, and the Clearwater Unit Plant, located at Lewiston, Idaho, and two logging departments known as Clearwater Logging Department, located at Headquarters, Idaho, and the Bovill Logging Department, located at Bovill, Idaho. The Company owns and operates several camps in connection with its two logging departments. In 1942, the Company disposed of 462,743,536 board feet of lumber, of which 449,449,383 board feet were sold to customers. During the same period, 96 percent of the products of the Company was shipped to points outside the State of Idaho. We find that the Company, in the conduct of its five operations and through its subsidiaries, is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Locals 10–358, 10–361, and 10–364, International Woodworkers of America are labor organizations affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Locals 2679, 2664, 2923, 2766, and 2584, Lumber and Sawmill Workers' Union, chartered by the United Brotherhood of Carpenters and Joiners of America, are labor organizations affiliated with the Northwestern Council Lumber and Sawmill Workers, an affiliate of the American Federation of Labor, admitting to membership employees of the Company.

III. THE ALLEGED APPROPRIATE UNIT

The principal issue involved herein is whether the units sought to be established by the C. I. O. are appropriate.[2] The C. I. O. contends that the employees of each of the three operations of the Company which it desires to represent constitute separate and distinct appropriate units.[3] The A. F. L. contends that all five operations constitute an appropriate unit. The Company takes no position with respect to this issue or to any of the issues involved herein; it appeared at the hearing merely for the purpose of assisting the Board in its investigation.

[2] In view of our finding hereinafter set forth, we deem it unnecessary to determine whether the collective bargaining contracts of the A. F. L. and its locals with the Company constitute a bar to a present determination of representatives.

[3] The C. I. O. seeks to represent the Clearwater Unit Plant, the Clearwater Logging Department, and the Bovill Logging Department as separate units.

The Company conducts all of its operations in the northwestern portion of the State of Idaho. It is approximately 90 miles from the Clearwater Unit plant at Lewiston to the Clearwater Logging Department at Headquarters, which is its source of timber. The Bovill Logging Department, which supplies the Potlatch and Rutledge Mills with timber, is approximately 25 miles from Potlatch and about 100 miles from Coeur d'Alene, where the Rutledge Unit plant is located. Connected with each of the logging operations are the various logging camps operated by the Company. At each of the unit plants there are mills and facilities for making "Presto Logs," the product of Wood Briquets, Inc., a subsidiary of the Company. Lewiston is about 65 miles from Potlatch and about 135 miles from Coeur d'Alene. Bovill is approximately 60 miles from Headquarters, but due to the terrain it is necessary to use an indirect route traveling from one logging operation to another, and thus the distance is approximately 100 miles.

On occasion, the Company has shifted timber from Clearwater Logging Department to the mill at Potlatch; it has transferred lumber carriers and lift equipment, together with their crews, from one mill to another, and has even transferred an entire shift from one mill to another. In addition there is some interchange of personnel between the logging operations at Bovill and Headquarters. The record also discloses one instance in which mill workers were transferred to a logging department for a short time, and were later returned to the mill without loss of seniority. In spite of this interchangeability of personnel, the distances between the operations of the Company

make it unfeasible for all of its employees to gather at one place, and for this reason they had been represented upon a unit basis, which the A. F. L. later consolidated, keeping, however, as hereinafter indicated, a local organization at each of the operations of the Company.

The three unit plants, prior to their representation by the A. F. L., were represented for the purposes of collective bargaining on a unit basis by the Loyal Legion of Loggers and Lumbermen, which subsequently became the Independent Employee's Union, herein called the I. E. U. On September 13, 1937, the A. F. L. filed charges alleging that the Company and the I. E. U. were engaging in unfair labor practices.[4] The Board, on January 25, 1940, ordered the I. E. U. disestablished and ordered that the Company withdraw its recognition of the I. E. U. and its locals.[5] Subsequent to the filing of these charges, the A. F. L. became the bargaining representative for the employees of each of the mills of the Company, either by cross-check or consent election conducted by the Board,[6] or upon the basis of a consent election held under other auspices.[7]

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[4] *Matter of Potlatch Forests, Inc.*, 19 N. L. R. B. 887.

[5] 19 N. L. R. B. 945.

[6] Case No. 19–C–634 (Potlatch Unit plant). In 1938, the C. I. O. filed a petition seeking to represent the employees of the Rutledge Unit plant (Case No. 19–R–265); however, it lost the election conducted as part of that proceeding. In February 1941, it again filed a petition seeking to represent these employees (Case No. 19–R–662). As part of this proceeding, a consent election was conducted in which both the C. I. O. and the A. F. L. were on the ballot. The election resulted in the selection of the A. F. L. as the bargaining representative of these employees.

[7] The Clearwater Unit plant.

The employees of the Logging Departments were first represented by the I. W. W. in separate units. However, in 1939, the A. F. L. filed separate petitions,[8] seeking to represent the employees of each of these departments. Both proceedings resulted in cross-checks in which the A. F. L. was chosen as the bargaining representative.

Thus, by 1941, the A. F. L. had successfully organized and been selected as bargaining representative of the employees of each of the five operations of the Company. On June 5, 1941, the Company and the five locals of the A. F. L.[9] executed a "Master Contract" effective as of June 1 covering all five operations of the Company. This contract was signed on behalf of the A. F. L. by representatives of the five locals, as well as by the Inland Empire District Council, herein called the Council.[10] The contract provided for recognition of the A. F. L. by the Company as the exclusive bargaining agency for all its production and maintenance employees, as well as for uniform regulations with regard to the adjustment of grievances, wages, hours, and other conditions of employment. In addition thereto, it provided that "supplemental and strictly local agreements shall be negotiated by the local unions * * * with the local managers * * * covering strictly local matters" and the following clause was appended:

> It is understood and agreed that the Master Agreement of June 1, 1941, shall have no force and effect until the local

[8] Cases Nos. 19–R–339, 19–R–340.

[9] As hereinabove indicated, the A. F. L. organized each operation of the Company separately, setting up a local at each.

[10] The A. F. L. locals were members of the Council.

unions and the Company divisions have agreed upon and signed the local agreements required by the Master Agreement.

Subsequent thereto, the managers of each of the operations signed supplemental contracts with the locals, thus carrying out the provisions of the Master Contract. These local contracts covered purely local affairs, and took the form of a collection of amendments to corresponding sections in the Master Agreement. The Master Contract was subsequently renewed on May 29, 1942.

From the facts set forth above, we are of the opinion that the collective bargaining between the Company and the A. F. L. and its various locals clearly indicates the propriety of a unit consisting of the logging and mill employees of the Company. The bargaining on matters of wages, hours, and general working conditions has been conducted by the A. F. L. for all the production and maintenance employees of the Company. The local agreements have been on matters of an essentially local character, and are not inconsistent with bargaining upon a company-wide basis. They merely implement the basic conditions and general principles established by the Master Contract and adapt them to the conditions peculiar to each operation. Manifestly, it would be unrealistic for the parties to make uniform provisions on all subjects with no allowance for leaving purely local matters to be adjusted on a local basis. Upon the entire record, we are convinced that the primary matters of collective bargaining have been negotiated on a company-wide basis for the production and maintenance employees of the Company and that the bargaining engaged in by

each of the locals has been of a limited and supplementary character. Accordingly, we find that units consisting solely of the employees of the three operations of the Company which the C. I. O. seeks to represent are inappropriate.

IV. THE QUESTION CONCERNING REPRESENTATION

Since the bargaining units sought to be established by the petitions are inappropriate, as stated in Section III, above, we find that no question has arisen concerning the representation of employees of the Company in an appropriate bargaining unit.

ORDER

Upon the basis of the foregoing facts, the National Labor Relations Board hereby orders that the petitions for investigation and certification of representatives of employees of Potlatch Forests, Inc., Lewiston, Idaho, filed by Locals 10–358, 10–361, 10–364, International Woodworkers of America, C. I. O., be, and they hereby are, dismissed.

Signed at Washington, D. C., this 14th day of July 1943.

[SEAL]

HARRY A. MILLIS,
Chairman,
GERARD D. REILLY,
Member,
JOHN M. HOUSTON,
Member,
National Labor Relations Board.

In the Matter of POTLATCH FORESTS, INC. *and* LOCALS 10–358 and 10–361, INTERNATIONAL WOODWORKERS OF AMERICA, AFFILIATED WITH THE C. I. O.

In the Matter of POTLATCH FORESTS, INC. *and* LOCAL 10–364, INTERNATIONAL WOODWORKERS OF AMERICA, AFFILIATED WITH THE C. I. O.

In the Matter of POTLATCH FORESTS, INC. *and* INTERNATIONAL WOODWORKERS OF AMERICA, AFFILIATED WITH THE C. I. O.

Cases Nos. R–5373 (19–R–1058), R–5374 (19–R–1083) and 19–R–1164 respectively.—Decided October 14, 1943

[52 N. L. R. B. 1377]

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On July 13, 1943, the National Labor Relations Board, herein called the Board, issued a Decision and Order in the above-entitled proceeding,[1] dismissing the petitions of Locals 10–358, 10–361, and 10–364, International Woodworkers of

[1] 51 N. L. R. B. 288.

America, affiliated with the Congress of Industrial Organizations, herein collectively called the C. I. O., on the ground that the units sought therein were inappropriate for the purposes of collective bargaining.

On July 16, 1943, the C. I. O.[2] filed with the Regional Director for the Nineteenth Region (Seattle, Washington) a further petition, which was thereafter designated as Case No. 19–R–1164, requesting an investigation and certification of employees of the Company in a unit different from those previously requested. On August 11, 1943, the C. I. O. filed with the Board a motion requesting that the record in Cases Nos. R–5373 and R–5374 be reopened and consolidated with Case No. 19–R–1164, and that an election be directed among employees in the unit sought in the last numbered case without hearing; or, in the alternative, that the record in Cases Nos. R–5373 and R–5374 be incorporated in Case No. 19–R–1164, and that an election be directed.

On September 14, 1943, the Board issued a Notice to Show Cause why (1) the Decision and Order in Cases Nos. R–5373 and R–5374 should not be vacated; (2) the petitions in those cases should not be reinstated; (3) the petition in Case No. R–1164 should not be made a part of the record in Cases Nos. R–5373 and R–5374 and considered as an amendment to the petitions in said cases; (4) the statement of the Field Examiner concerning claims of authorization for the purpose of representation in Case No. 19–R–1164

[2] The petition in Case No. 19–R–1164 was filed by International Woodworkers of America, affiliated with the C. I. O.

should not be made part of the record in Cases Nos. R–5373 and R–5374; and (5) the Board should not reconsider the Decision and Order in Cases Nos. R–5373 and R–5374, as thus supplemented, and proceed to a new decision without further hearing.

Inland Empire District Council, Lumber & Sawmill Workers Union, American Federation of Labor, herein called the A. F. L.,[3] thereafter filed "Protest and Objection to Order of September 14, 1943," alleging that (a) said order contemplates a decision by the Board without the taking of evidence which would be based partially upon a report and investigation of the Regional Director[4] which was not served upon the A. F. L.,[5] and, therefore, as to it is hearsay and *ex parte*, since the A. F. L. is deprived of an opportunity to cross-examine with respect thereto; (b) the employees at two of the Company's mills located at Potlatch and Coeur D'Alene, Idaho, respectively, would be deprived of an opportunity to demonstrate their bargaining status, inasmuch as they had no such opportunity under the former hearing, nor at any time since, to present evidence on their own behalf, and (c) the Board has no authority to set aside an existing contract by such proceedings.

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[3] The A. F. L. appeared in the original hearing as Locals 2679, 2664, 2923, 2766, and 2584, Lumber and Sawmill Workers Union chartered by the United Brotherhood of Carpenters and Joiners of America, affiliated with the A. F. L., by the Northwestern Council Lumber and Sawmill Workers.

[4] The investigation and report and the revised report hereinafter set forth were each made by the Field Examiner.

[5] Service of a copy of the Field Examiner's report was later admitted.

For reasons hereinafter stated, the Board is of the opinion that insufficient cause to the contrary has been shown, and hereby vacates the Decision and Order in Cases Nos. R–5373 and R–5374, reinstating the petitions in these cases, making the petition in Case 19–R–1164 a part of the record in Cases Nos. R–5373 and R–5374, and treating it as an amendment to the petitions in those cases, and making the "Statement of Field Examiner concerning claims of authorization for the purpose of representation," and the "Revised Statement of Field Examiner concerning claims of authorization for the purpose of representation" in Case No. 19–R–1164 a part of the record in Cases Nos. R–5373 and R–5374.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. The Business of the Company

Potlatch Forests, Inc., a Maine corporation, is engaged in the general logging, sawmill, mill, and manufacturing business. It cuts lumber into logs, saws and mills logs into lumber and lumber products and sells such products throughout the United States. It owns and operates three subsidiary corporations known as the Forest Development Company, the Washington-Idaho-Montana Railroad, a common carrier, and Wood-Briquets, Inc. In addition thereto, it owns and conducts five operations consisting of three mills known as the Potlatch Unit Plant located at Potlatch, Idaho, the Rutledge Unit Plant, located at Coeur

d'Alene, Idaho, and the Clearwater Unit Plant, located at Lewiston, Idaho, and two logging departments known as the Bovill (or Potlatch) Logging Department, located at Bovill, Idaho, and the Clearwater Logging Department, located at Headquarters, Idaho. The Company owns and operates several camps in connection with its two logging departments. We are concerned herein with the mill and logging operations of the Company. In 1942 the Company disposed of 462,743,536 board feet of lumber, of which 449,449,383 board feet were sold to customers. During the same period 96 percent of the products of the Company was shipped to points outside the State of Idaho. We find that the Company, in the conduct of its five operations, is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Woodworkers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Inland Empire District Council, Lumber & Sawmill Workers Union, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The A. F. L., after organizing and becoming the bargaining representative of the employees at each of the five milling and logging operations of

the Company,[5] executed a contract with the Company on June 5, 1941, retroactive to June 1, 1941, in which it combined all five operations within a single unit. This contract, however, preserved to the locals of the A. F. L. at the separate operations of the Company a limited autonomy for the purposes of local administration. The contract provided that it could be modified or terminated upon sixty (60) days' written notice by either party, and that in the absence of such notice it was automatically terminated on June 1, 1942. However, the contract was subsequently renewed on May 29, 1942, such renewal expiring on June 1, 1943.[7]

By letters dated March 9 and 29, 1943, the C. I. O. through certain of its locals requested that the Company recognize it as the bargaining representative of its employees at its milling operations at Lewiston, Idaho, and its two logging operations located at Headquarters and Bovill, Idaho, respectively. The Company replied by letters in which it stated that the A. F. L. was the current bargaining representative of these employees, and that the question of majority representation must be determined by the Board. Since the original notices given by the C. I. O. were timely,[8] and because the contract of June 5,

[5] The Board issued certification to the A. F. L. on 4 of these occasions of which 3 were the result of cross-checks pursuant to stipulation, and 1 the result of an election held pursuant to a stipulation.

[7] The Board has received notice that the contract has again been renewed since the entertainment of the original petitions herein.

[8] See *Matter of Dain Manufacturing Company*, 41 N. L. R. B. 1056; *Matter of United States Rubber Company*, 41 N. L. R. B. 1005.

1941, as subsequently renewed, is terminable at any time upon sixty (60) days' notice, we find that it does not constitute a bar to the instant proceeding.[9]

Statements of the Field Examiner in Case No. 19–R–1164, which have been made part of the record in the original cases, indicate that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.[10]

We find that a question affecting commerce has arisen concerning the representation of employees

[9] *Matter of Todd-Johnson Dry Docks, Inc.*, 10 N. L. R. B. 629–632; see also, *Matter of Guistina Brothers Lumber Company*, 41 N. L. R. B. 1243.

[10] The Field Examiner reported that the C. I. O. submitted 1100 application cards bearing apparently genuine signatures of persons appearing on the Company's pay roll of July 21, 1943. Said pay roll contained approximately 3177 names of employees within the appropriate unit. He further reported, in a revised statement, that by September 25, 1943, the C. I. O. had submitted a total of 1151 application cards bearing apparently genuine original signatures of persons whose names appear on the afore-mentioned pay roll.

The contract of June 5, 1941, as subsequently renewed, sufficiently establishes the interest of the A. F. L. in this proceeding.

As noted above, the A. F. L. objected to the inclusion of the Field Examiner's statements with the exhibits in Cases Nos. R–5373 and R–5374 on the ground that such statements are hearsay and, as to the A. F. L., *ex parte;* it further objected to its inclusion because it had not been given an opportunity to cross-examine with respect to the facts contained therein. Both objections are without merit. Such statements are based upon Board investigations which are necessarily *ex parte;* they are not offered as final proof of representation.

of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The C. I. O. at the hearing originally sought three separate units in conformance with its petitions in Cases Nos. R–5373 and R–5374, consisting of the production and maintenance employees at the Clearwater Unit Plant (Lewiston, Idaho), the Bovill (or Potlatch) Logging Department (Bovill, Idaho), and the Clearwater Logging Department (Headquarters, Idaho). In opposition thereto, the A. F. L. contended that all production and maintenance employees at the five operations of the Company constituted the appropriate unit, basing its contention upon the history of industrial relations of the Company which, since 1941, has bargained with respect to its employees upon the basis of a single company-wide unit. Thereafter, the C. I. O. filed the petition in Case No. 19–R–1164, in which it seeks a unit consisting of all production and maintenance employees of the Company at the five operations, excluding clerical, supervisory, confidential, and temporary employees, as well as employees of Potlach Townsite and Potlash Mercantile Company employees.[11]

but are merely safeguards against the indiscriminate filing of petitions, and are not, therefore, subject to cross-examination. See *Matter of Mill Stores, Inc.*, 39 N. L. R. B. 874; *Matter of Atlas Powder Company*, 43 N. L. R. B. 757.

[11] This unit conforms generally to the unit covered by the contract of June 5, 1941, between the Company and the A. F. L., as amended by the local agreements covering each operation.

The A. F. L. opposed the order directing the consolidation of the proceedings herein upon the ground, *inter alia*, that the employees at the Potlatch Unit Plant (Potlatch, Idaho) and the Rutledge Unit Plant (Coeur D'Alene, Idaho) had no opportunity to establish their bargaining status. This contention is untenable. The A. F. L., as representative of the employees of all five operations of the Company, including those engaged at the Potlatch and Rutledge Unit Plants, until now has conceded no severability in the bargaining status of the employees comprising any one of the several operations now included within the bargaining unit which it currently represents. Consequently, any implication that the bargaining rights or status of the employees at two of the operations is in any way different from that of the remaining employees in the unit would be diametrically opposed to the position that the A. F. L. has constantly maintained herein, and which is evidenced by its bargaining relations with the Company since 1941. Furthermore, the A. F. L. appeared at the hearing on behalf of its locals which represented each of the five divisions of the Company. It is apparent, therefore, that no prejudice can result from any alleged lack of opportunity accorded the employees at the Potlatch and Rutledge Unit Plants to establish their bargaining status.

We are of the opinion that the bargaining history, hereinabove stated, between the Company and the A. F. L. and the latter's various locals clearly indicates the propriety of a single company-wide unit, and we find, therefore, that such

a unit comprised of all production and maintenance employees at the five operations is appropriate.

There remains for consideration certain classifications of employees whose status at the hearing was in dispute.

Store employees: The Company includes within its operations a store located at Bovill, Idaho. The A. F. L. contended at the hearing held in Cases Nos. R–5373 and R–5374 that the employees engaged therein should be included within the unit, whereas, the C. I. O. desired their exclusion. The A. F. L. based its contention upon the fact that these employees were included within the scope of the local contract covering this operation and the additional fact that it bargained with the Company on their behalf. However, the local contract is silent on this point. In any event, we are of the opinion that the interests of these employees are not akin to those of the logging and mill employees, and we shall, therefore, exclude them.[12]

Scalers: The local contract of the Clearwater Logging Department amends the master contract by excluding scalers from the unit; however, both labor organizations desired to include them. Although the Company has classified these employees on its pay roll as clericals, it appears that the interests and duties of scalers[13] are sufficiently

[12] *Matter of Ohio Public Service Co.*, 45 N. L. R. B. 1244; *Matter of Sullivan Drydock & Repair Corp.*, 37 N. L. R. B. 13.

[13] See Dictionary of Occupational Titles, June 1939 Edition, page 561 under Log Scaler (I) and (II).

allied to those of the logging employees to warrant their inclusion within a unit of logging and mill employees. We shall, therefore include them.[14]

Militarized and deputized guards and watchmen: The Company employs several persons in these classifications whom it lists under the general heading of "maintenance," and whom both labor organizations would include within the unit. However, in view of our policy with respect to militarized and deputized employees,[15] we shall exclude these employees from the unit.

We find, therefore, that all production and maintenance employees of the Company at its five operations, including scalers, and railroad employees at the logging operations who are not employees of the Washington-Idaho-Montana Railroad, but excluding all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action, store employees, armed and militarized guards and watchmen, clerical employees, confidential employees, employees of Potlach Mercantile Company,[16] employees of the Townsite Department,[17] foresters,[18] and temporary em-

[14] *Matter of Ewauna Box Company*, 44 N. L. R. B. 1369.

[15] *Matter of Draves Corporation*, 52 N. L. R. B. 322.

[16] These employees were also excluded under the terms of the local contract between the Company and a local of the A. F. L. covering the Potlatch Unit Plant.

[17] See footnote 16, *supra*.

[18] These employees were excluded under the terms of the local contract between the Company and a local of the A. F. L. covering the Clearwater Logging Department.

ployees,[19] constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Potlatch Forests, Inc., Lewiston, Idaho, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Nineteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article

[19] See *Matter of Crater Lake Box and Lumber Company*, 35 N. L. R. B. 108.

III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause, to determine whether they desire to be represented by International Woodworkers of America, affiliated with the Congress of Industrial Organizations, or by Inland Empire District Council, Lumber & Sawmill Workers Union, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

Signed at Washington, D. C., this 14 day of October 1943.

[SEAL]

HARRY A. MILLIS,
Chairman,

GERARD D. REILLY,
Member,

JOHN M. HOUSTON,
Member,

National Labor Relations Board.

In the Matter of POTLATCH FORESTS, INC., *and* LOCALS 10–358 AND 10–361, INTERNATIONAL WOODWORKERS OF AMERICA, AFFILIATED WITH THE C. I. O.

In the Matter of POTLATCH FORESTS, INC. *and* LOCAL 10–364, INTERNATIONAL WOODWORKERS OF AMERICA, AFFILIATED WITH THE C. I. O.

In the Matter of POTLATCH FORESTS, INC. *and* INTERNATIONAL WOODWORKERS OF AMERICA, AFFILIATED WITH THE C. I. O.

Cases Nos. R–5373 (19–R–1058), R–5374 (19–R–1083), 19–R–1164, respectively

[55 N. L. R. B. 255]

SUPPLEMENTAL DECISION

AND

CERTIFICATION OF REPRESENTATIVES

March 4, 1944

On November 9, 10, 11, and 12, 1943, pursuant to the Decision and Direction of Election issued by the Board herein on October 14, 1943,[1] an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Nineteenth Region (Seattle, Washington). On November 15, 1943, the Regional Direc-

[1] 52 N. L. R. B. 1377.

tor issued and duly served upon the parties a Report on Ordered Election.

Said report indicated that of approximately 2,886 voters in the unit, 2,178 cast valid votes, 1,118 of which were cast for International Woodworkers of America, C. I. O., herein called the C. I. O., 953 were cast for Lumber and Sawmill Workers Union, A. F. L., herein called the A. F. L., 21 were cast for neither, 3 were invalid, and 83 were challenged.[2] Since a disposition of the challenged ballots did not affect the results of the election, the Regional Director made no recommendation with respect thereto.

On November 17, 1943, the A. F. L. filed Objections and Exceptions to Election with the Regional Director, alleging that (1) the order directing the election was invalid, since no hearing was afforded by the Board, as required by statute, and since the evidence considered by the Board in ordering the election was, as to the A. F. L., hearsay and *ex parte;* (2) a substantial number of employees of Potlatch Forests, Inc., herein called the Company, who are now in military service, were erroneously excluded from participating in the election because of the method of conducting

[2] In his report, the Regional Director stated with respect to the challenged votes:

"* * * 3 were cast by employees of the Townsite department who were excluded from the unit by the Board's Direction of Election. Forty-four challenged votes were cast by the employees of the Washington-Idaho-Montana railroad, which employees were excluded from the unit by direction of the Board. Of the remaining challenged votes, 36 in number, all challenges were made because it was claimed that the employees were excluded by the terms of the Board's Direction of Election."

said election; (3) the order directing the election excluded railway maintenance employees who are members of the Potlatch local of the A. F. L., a party to the Master Contract between the Company and the A. F. L.; (4) Townsite employees were improperly excluded from participating in the election; and (5) a number of votes were cast by employees added to the Company's pay roll subsequent to the Direction of Election.

On December 28, 1943, the Regional Director issued and duly served upon the parties a Report on Objections, recommending that, since the matters contained in the objections were directed to the Decision and Direction of Election herein, and not to the conduct of the ballot, the objections be overruled.

Thereafter, on January 11, 1944, the A. F. L. filed a motion with the Board, seeking reconsideration of the Decision and Direction of Election herein, vacation of the election conducted pursuant thereto, a stay of certification, and an appropriate hearing. In support of said motion, the A. F. L. contended, in general, that (1) the Decision and Direction of Election was issued without according the A. F. L. a hearing in accordance with its statutory rights in that it was not afforded an opportunity to present evidence with respect to issues not present in the original proceeding,[3] referring specifically to Potlatch Mercantile and Potlatch Townsite employees, and other employees engaged in and about the two operations not involved in that proceeding; (2) no opportunity was accorded the A. F. L.

[3] *Matter of Potlatch Forests, Inc.*, 51 N. L. R. B. 288.

to present evidence with respect to the appropriate pay roll to be used for determination of eligibility, or with respect to the proper times and places for the holding of the election; and (3) the A. F. L. was not given an adequate opportunity to present evidence with respect to (a) the status of Washington-Idaho-Montana railroad employees, (b) the validity of the statement of the Field Examiner in Case No. 19–R–1164, which was considered as part of the record in the Decision and Direction of Election, (c) the status of employees of the Potlatch and Rutledge operations who had entered the armed services of the United States,[4] (d) the impropriety of permitting the participation in the election of employees added to the Company's pay roll between the date of the hearing[5] and the dates of the election, and (e) the nature and status of the contractual relations between the Company and the A. F. L. After due consideration, the Board, on January 27, 1944, issued an Order directing further hearing upon the matters raised in the afore-mentioned objections and motion of the A. F. L., remanding the proceeding to the Regional Director for the purpose of conducting said hearing. Said order further provided that a ruling upon the motion of the A. F. L. would be deferred until the Board

[4] The A. F. L. conceded in its motion that the policy of the Board on the subject is well known, but contended that the representatives of these operations had the right to present evidence and arguments upon this subject in an effort to obtain revision or modification of such policy.

[5] The A. F. L. refers to the hearing conducted pursuant to the original petitions (see footnote 3, *supra*) in this proceeding, which was held on May 14 and 15, 1943.

had reconsidered the entire record, including the evidence to be adduced at the further hearing. The aforesaid hearing was held upon due notice at Lewiston, Idaho, on February 18 and 19, 1944, before Thomas P. Graham, Trial Examiner. The Company, the C. I. O., and the A. F. L. appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[6] All parties were afforded an opportunity to file briefs with the Board. The A. F. L. made a request at the hearing, and again subsequent thereto for oral argument before the Board. Said requests are hereby denied.

Upon the entire record in the case, including the Report on Elections, the Objections and Exceptions of the A. F. L., the Report on Objections, the motion of the A. F. L., and the further hearing on said objections and motions, the Board makes the following:

Supplemental Findings of Fact

The principal contention of the A. F. L. is that it was not afforded a proper hearing as provided by the National Labor Relations Act, and the Board's Rules and Regulations. The record in

[6] At the hearing, the A. F. L. sought to introduce several exhibits pertaining to persons employed by the Company who had been inducted into the armed forces of the United States. The Trial Examiner rejected many of these exhibits on the ground that they were cumulative, since he had already received into evidence one such exhibit.

this consolidated proceeding indicates the following sequence of events:

The C. I. O., in its original petitions, had sought to represent the employees of the Bovill, Headquarters, and Lewiston operations of the Company in three separate units.[7] The A. F. L. appeared at the hearing held pursuant to these petitions and was given an opportunity to participate therein. Thereafter, on July 13, 1943, the Board issued a Decision and Order, dismissing the said petitions on the ground that the collective bargaining history between the Company and the A. F. L. clearly indicated the propriety of a single unit composed of all logging and milling employees of the Company.[8] On July 16, 1943, after the issuance of the Decision and Order, the C. I. O. filed a petition[9] in which it sought a unit conforming to that which the Board had indicated as appropriate in its decision. Thereafter, on August 11, 1943, the C. I. O. filed a motion with the Board for an order reopening the original proceedings, amending the petitions therein to conform with its current petition, and directing an election among all employees of the Company without further hearing; in the alternative it moved that the record in the original proceedings be incorporated and made a part of the record in the current one, and that an election be directed thereon. After due consideration of the motion, the Board, on September 14, 1943, issued a Notice to Show Cause why (a) the Decision and Order

[7] Cases Nos. 19–R–1058 (R–5373) and 19–R–1083 (R–5374).

[8] See footnote 3, *supra*.

[9] Case No. 19–R–1164.

previously issued should not be vacated, (b) the original petition reinstated, (c) the new petition should not be made part of the record in the original proceedings and treated as an amendment to the petitions therein, (d) the statement of the Field Examiner in the current proceeding should not be made a part of the record in the original proceedings, (e) a reconsideration of the entire record as thus supplemented should not be made, and (f) a new Decision and Direction of Election should not be issued without further hearing. In answer thereto, the A. F. L. filed a "Protest and Objection to Order of September 14, 1943," contending that the procedure contemplated by the Board was based upon hearsay and is *ex parte* as to the A. F. L., that employees of two operations of the Company not included within the scope of the original petitions filed by the C. I. O. had not been given an opportunity to present evidence on their own behalf, and that the Board had no authority to set aside an existing contract by such proceedings. For reasons stated in the Decision and Direction of Election subsequently issued,[10] the Board found that insufficient cause to the contrary had been shown, and directed an election in accordance with its Notice.[11] As pre-

[10] See footnote 1, *supra*.

[11] The A. F. L. thereupon petitioned the District Court of the United States for the Western District of Washington, Northern Division, to enjoin the Regional Director from holding the election; the Court, however, refused to grant the relief sought on the ground that such action was premature, since the Board had not taken final action in this proceeding. See *Inland Empire District Council* v. *Thomas P. Graham, et al.*, Civil Action, No. 827, issued November 6, 1943, 13 L. R. R. 356.

viously indicated, the C. I. O. obtained a majority of the valid votes cast at said election and the Regional Director so reported.[12] Thereupon the A. F. L. filed Objections to the Election Report and a motion for reconsideration. As indicated hereinabove, the Board remanded the entire proceeding to the Regional Director for the purpose of conducting a further hearing upon the matters contained in said objections and motion.

As stated above, the A. F. L. in substance contends that the Board was not authorized by the Act to order an election without first having held a hearing on the petition of the C. I. O. in Case No. 19-R-1164, and consequently that no certification

[12] The A. F. L. petitioned the Federal District Court for the District of Idaho, Central Division, to enjoin the transmission of the election report by the Regional Director to the Board. This proceeding was dismissed in November 1943, since service upon all the defendants was not obtained. See Local 2766, *Lumber and Sawmill Workers Union, et al.* v. *Essie Hanson*, Civil Action, No. 1553.

The A. F. L. also sought similar relief in the Federal District Court for the Western District of Washington, Northern Division. The Court granted a temporary restraining order on November 19, 1943, but thereafter dismissed the proceeding by order dated December 9, 1943. See *Inland Empire District Council, etc., et al.* v. *T. P. Graham, Jr.*, Civil action, No. 834.

In addition to the foregoing actions, the A. F. L. brought a proceeding in the Federal District Court for the District of Columbia, seeking to set aside all proceedings taken by the Board in this matter, including the Report on Ordered Election. The Court, by order dated December 15, 1943, granted a motion of the Board to dismiss this proceeding on the ground that the relief sought was premature. See *Inland Empire District Council, Lumber and Sawmill Workers Union, et al.* v. *N. L. R. B., et al.*, Civil Action, No. 22353.

can be issued as a result of the election. Assuming *arguendo* that the A. F. L. is correct in contending that the statutory requirement of a hearing was not met by the procedure followed by the Board prior to the election, such procedural defect, if any existed, is cured inasmuch as the Board has since held a hearing on all matters objected to by the A. F. L. and has reconsidered the entire case on the basis of the records made at both hearings. We find therefore that the requirements of an appropriate hearing have been met; the contention of the A. F. L. that it has not been accorded a hearing is accordingly overruled.

The A. F. L. contended in its motion that it had entered upon contractual relations with the Company between the issuance of the Decision and Order,[13] and the Decision and Direction of Election herein,[14] and that it was entitled to present evidence thereon. The Board, accordingly, permitted the A. F. L. at the further hearing to present whatever additional evidence it deemed pertinent to a full disclosure of its contractual relations with the Company.

The record shows that on June 5, 1941, the A. F. L. and the Company executed a master contract, effective June 1, 1941, covering all five milling and logging operations of the Company. The contract provided that in the event "either party to this agreement desires to modify or terminate the agreement, he shall give written notice to the other party at least sixty days in advance of such modification or termination."

[13] See footnote 3, *supra*.

[14] See footnote 1, *supra*.

It further provided that unless the foregoing option to modify or terminate "is exercised by either party at a prior date, the agreement shall automatically terminate one year from the date of the agreement." On May 29, 1942, the Company advised the A. F. L. that "we are willing to renew the present Master Agreement * * * which expires on June 1, 1942, for one year to cover the period from that date to June 1, 1943." On February 16, 1943, the Company notified the A. F. L. in substance that, unless the A. F. L. agreed to eliminate a clause in the master agreement requiring employees to maintain their membership in the A. F. L., "we ask you to accept this as notice of termination of the master agreement as of May 1, 1943." The A. F. L. did not agree to eliminate the clause objected to by the Company, and consequently the contract was terminated, pursuant to the Company's notice, on May 1, 1943. The record shows that no new contract has been entered into by the Company and the A. F. L. After termination of the contract and following numerous proceedings, which it is unnecessary here to relate, before an agency of the National War Labor Board known as the West Coast Lumber Commission, certain orders were issued directing an extension of the contract. It is unnecessary to pass upon the validity of these orders since the last order of the National War Labor Board, dated January 31, 1944, on its face states that the extension is operative only "until a new exclusive bargaining agency is certified by the National Labor Relations Board."

Both in its objections and in its motion, the A. F. L. contended that it was entitled to intro-

duce evidence relating to the status of employees of the Company who had been inducted into the armed forces of the United States. At the further hearing it was permitted to introduce such evidence, the Trial Examiner rejecting only such exhibits as were corroborative of the evidence already introduced. At this hearing, the A. F. L. contended that such persons should have been entitled to participate in the election, and that the Board should have made provision for the balloting of these employees. We have frequently had occasion to pass upon this issue, and, for reasons stated in the *Wilson* Case,[15] find that our customary practice, as set forth in the Direction of Election, was proper.

The A. F. L. contended in its motion that it should have been afforded an opportunity to present evidence with respect to the proper pay roll to be used for the purpose of determining eligibility to participate in the election and with respect to the times and places for the conduct of the election. It further contended, both in its motion and in its objections, that it was not given an opportunity to present evidence indicating the inappropriateness of permitting persons added to the Company's pay roll between May 14, 1943,[16] and November 9, 1943,[17] to participate in the election. Although it was permitted to do so at the further hearing, the A. F. L. presented no evidence sufficient to warrant a disturbance of

[15] *Matter of Wilson & Co., Inc.*, 37 N. L. R. B. 944; see also *Mesta Machinery Company*, 55 N. L. R. B. 59.

[16] The first day of the original hearing in Cases Nos. 19–R–1058 and 19–R–1083.

[17] The first day of the election herein.

our customary finding with respect to eligibility which was made in Section V of the Decision and Direction of Election.

The A. F. L. also contends that the Board considered the statement of the Field Examiner in Case No. 19–R–1164 without permitting any opportunity to point out defects and weaknesses contained therein. For reasons stated in our Decision and Direction of Election, we find this contention to be without merit.[18]

Both in its objections and in its motion, the A. F. L. contended that it had not been given an opportunity to present evidence with respect to the status of employees of the Washington-Idaho-Montana railroad who were excluded from the voting group by the Decision and Direction of Election. At the further hearing, the A. F. L. presented evidence indicating that these employees were represented by its Potlatch local for the purposes of collective bargaining, and took the position, therefore, that they should have been given an opportunity to vote. The evidence adduced at said hearing clearly showed that these employees were employed by a railroad company, which, although a wholly owned subsidiary of the Company herein, is a separate and distinct corporate enterprise. The evidence further showed that these employees are covered by a

[18] In said Decision we stated: "Such statements are based upon Board investigations which are necessarily *ex parte;* they are not offered as final proof of representation, but are merely safeguards against the indiscriminate filing of petitions, and are not, therefore, subject to cross examination. See *Matter of Hill Stores, Inc.*, 39 N. L. R. B. 874; *Matter of Atlas Powder Company*, 43 N. L. R. B. 757.

contract between the Potlatch local of the A. F. L. and the railroad as a distinct unit. Since they are represented under a separate contract and are not employees of the Company, we see no reason for disturbing our previous finding.[19]

The A. F. L. contends that it had not been given an opportunity to present evidence upon the status of Potlatch Townsite and Potlatch Mercantile employees who had been specifically excluded from the voting unit by the Decision and Direction of Election, and, at the further hearing, took the position that these employees should have been included within the voting group. The evidence adduced at said hearing shows that Potlatch Townsite employees are maintenance workers who are concerned primarily with the repair and maintenance of property within the town of Potlatch and that they perform their duties according to a working schedule which differs from that of the logging and milling employees; and that only on rare occasions are they asked to perform maintenance work at the Potlatch Milling operation.[20] Furthermore, the subsidiary contract between the Potlatch local of the A. F. L. and the Potlatch operation of the Company[21] specifically excludes

[19] It is unnecessary to pass upon the question whether the railroad company is subject to the Railway Labor Act and hence not an employer within the meaning of Section 2 (2) of the Act.

[20] The record discloses that there is a separate maintenance crew attached to the mill which ordinarily takes care of the maintenance work of the mill.

[21] The master contract of June 5, 1941, specifically provides for the execution of subsidiary contracts between each of the five operations of the Company and the locals of the

these employees from the unit, as well as the Potlatch Mercantile employees. With respect to the latter group, the record indicates that these employees are engaged by and receive a salary from the Potlatch Mercantile Company,[22] and their duties are confined to the store which the Merchantile Company operates. In view of the foregoing we see no reason for disturbing our prior finding with respect to these groups.

Although the issue was not specifically raised in either its motion or objections, the A. F. L. presented evidence at the further hearing which showed that watchmen and guards of the Company, although previously militarized and under the jurisdiction of the United States Army, have, since January 10, 1944, been demilitarized. The evidence at said hearing further indicates the watchmen, at least, are still deputized by the county. We see no reason, therefore, to disturb the finding made in our Decision and Direction of Election, and we shall specifically exclude deputized as well as militarized guards and watchmen.

We find that the objections of the A. F. L. raise no substantial or material issue with respect to the conduct of the ballot or to the Report on Ordered Election, and we therefore overrule them. Furthermore, in view of our discussion hereinabove, we see no reason for disturbing our previous Decision and Direction of Election. Ac-

A. F. L. at these operations. These subsidiary contracts contain provisions applicable to the circumstances presented at the particular operation covered thereby.

[22] The Company's employees are hourly paid.

cordingly, we shall certify the C. I. O. as the exclusive representative of the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3,

IT IS HEREBY CERTIFIED that International Woodworkers of America, affiliated with the Congress of Industrial Organizations, has been designated and selected by a majority of all production and maintenance employees of Potlatch Forests, Inc., Lewiston, Idaho, at its five operations, including scalers, and railroad employees at the logging operations who are not employees of the Washington-Idaho-Montana railroad, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees; or effectively recommend such action, store employees, militarized or deputized guards and watchmen, clerical employees, confidential employees, employees of Potlatch Mercantile Company, employees of the Townsite Department, foresters, and temporary employees, as their representatives for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, International Woodworkers of America, affiliated with the Congress of Industrial Organizations, is the exclusive representative of all such employees for the pur-

poses of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Washington, D. C., this 4th day of March 1944.

[SEAL]

HARRY A. MILLIS,
Chairman,
GERARD D. REILLY,
Member,
JOHN M. HOUSTON,
Member,
National Labor Relations Board.

APPENDIX B

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are as follows:

SEC. 3. (b) * * * The Board shall have an official seal which shall be judicially noticed.

* * * * *

SEC. 8. It shall be an unfair labor practice for an employer—

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. * * *

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of

such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect. * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. * * * Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and en-

ter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

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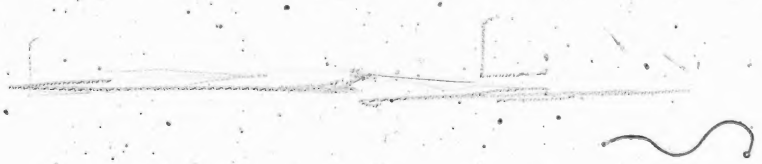

SUPREME COURT OF THE UNITED STATES.

No. 613.—October Term, 1944.

Inland Empire District Council, Lumber and Sawmill Workers Union, Lewiston, Idaho, et al., Petitioners, vs. Harry A. Millis, Individually and as Chairman and Member of the National Labor Relations Board, et al.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[June 11, 1945.]

Mr. Justice Rutledge delivered the opinion of the Court.

This controversy grows out of a contest between rival labor unions over the right to act as collective bargaining representative of employees of Potlatch Forest, Inc., a company conducting logging, lumbering and milling operations in northern Idaho. Petitioners seek relief from a certification order of the National Labor Relations Board issued pursuant to § 9(c) of the National Labor Relations Act. 49 Stat. 453; 29 U. S. C. § 159(c). They are affiliated with the American Federation of Labor, the certified union with the Congress of Industrial Organizations.

In *American Federation of Labor* v. *National Labor Relations Board*, 308 U. S. 401, this Court held that a certification under § 9(c) is not reviewable by the special statutory procedure except incidentally to review of orders restraining unfair labor practices under § 10. Decision was expressly reserved whether, apart from such proceedings, review of certification may be had by an independent suit brought pursuant to § 24 of the Judicial Code. 308 U. S. 412.

Petitioners now assert the right to such review. Prior to the certification, they had represented the company's employees in collective bargaining. They do not seek review upon the merits of the certification. Their claim is that they were denied the "appropriate hearing" which § 9(c) requires and that the effect was not only to deprive them of the statutory right to hearing but also to deny them due process of law contrary to the Fifth

Amendment's guaranty. Accordingly they seek, in substance, injunctive relief requiring respondents, members of the Board, to vacate the order of certification or, in the alternative, a declaratory judgment that the order is invalid.

The District Court declined to dismiss the suit, upon respondents' motion alleging, among other grounds, that the court was without jurisdiction of the subject matter. The Court of Appeals reversed the judgment, one judge dissenting. 144 F. 2d 539. That court held that the statutory review is exclusive, with the consequence that this suit cannot be maintained. The obvious importance of the decision caused us to grant the petition for certiorari.[1] — U. S. —.

In *American Federation of Labor* v. *National Labor Relations Board*, 312 U. S. at 412, the Court said, with reference to the question whether the Wagner Act has excluded judicial review of certification under § 9(c) by an independent suit brought under § 24 of the Judicial Code:

> It can be appropriately answered only upon a showing in such a suit that unlawful action of the Board has inflicted an injury on the petitioners for which the law, apart from the review provisions of the Wagner Act, affords a remedy.

Petitioners earnestly urge that this case presents the required showing of unlawful action by the Board and resulting injury. Unless they are right in this view, it would be inappropriate, as was said in the *American Federation of Labor* case, to determine the question of reviewability. That question should not be decided in the absence of some showing that the Board has acted

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[1] The inferior courts have divided on the question. Compare Association of Petroleum Workers v. Millis, No. 20854 (N. D. Ohio), unreported; Sub Ship Employees Association, Inc. v. National Labor Relations Board, 139 F. 2d 744 (C. C. A. 3); International Brotherhood of Electrical Workers v. National Labor Relations Board, No. 21994 (N. D. Ohio), unreported; American Broach Employees Association v. National Labor Relations Board, No. 4242 (E. D. Mich.), unreported; Spokane Aluminum Trades Council v. National Labor Relations Board, No. 349 (E. D. Wash.), unreported; with International Brotherhood of Electrical Workers v. National Labor Relations Board, 41 F. Supp. 57 (E. D. Mich.); American Federation of Labor v. Madden, 33 F. Supp. 943 (D. D. C.); Klein v. Herrick, 41 F. Supp. 417 (S. D. N. Y.); R. J. Reynolds Employees Association, Inc. v. National Labor Relations Board (M. D. N. C.), unreported; Reilly v. Millis, 52 F. Supp. 172 (D. D. C.), affirmed, 144 F. 2d 259 (App. D. C.); The Brotherhood and Union of Transit Employees of Baltimore v. Madden, 15 L. R. R. 519 (D. Md.), reversed, 15 L. R. R. 806; Inland Empire District Council Lumber & Sawmill Workers Union v. Graham, 53 F. Supp. 369 (W. D. Wash.).

unlawfully. Upon the facts presented, we think no such showing has been made, whether by way of departure from statutory requirements or from those of due process of law.

On March 9, 1943, local unions affiliated with the C. I. O. filed petitions with the Board for certification as bargaining representatives in three of the company's five logging and milling plants or units.[2] The plants were geographically separate. Some were located as far from others as one hundred miles. But there was common ownership, management and control, with occasional shifting of crews or men from one plant to another.[2] Although the petitions sought separate local units rather than a single company-wide unit, the Board consolidated them for hearing before a trial examiner.

The hearing was held in May, 1943. The company, the C. I. O., and the petitioners, who may be referred to collectively as the A. F. of L.,[3] appeared and participated. No complaint is made concerning this hearing. It was apparently a typical representation proceeding. The principal issue was the character of the appropriate unit. The A. F. of L. urged that the unit should be company-wide. The C. I. O. advocated separate plant units.

The Board's decision was rendered July 13, 1943. 51 N. L. R. B. 288. It found that the A. F. of L. had organized the employees on a company-wide basis and on this basis had made a "master contract" with the company, which however was supplemented by local contracts relating to local matters in each of the five operations. The Board concluded that the history of the bargaining relations had demonstrated the appropriateness of a unit consisting of all the logging and mill employees of the company. It therefore dismissed the petitions of the C. I. O. on the ground that the three separate plant units sought were inappropriate.

Three days later, on July 16, the C. I. O. filed a further petition, this time asking to be certified as bargaining representative on a company-wide basis, excluding clerical, supervisory, confidential,

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[2] Some special operations, e. g., the Washington-Idaho-Montana Railroad, were conducted through wholly owned subsidiaries.

[3] The collective designation is appropriate both for convenience and by reason of the facts noted in the text, relating to A. F. of L.'s dealings with the company through both a "master contract" and local supplemental agreements.

and temporary employees, as well as employees of Potlatch Townsite and Potlatch Mercantile Company.[4] The unit thus suggested conformed generally to the one covered by the outstanding A. F. of L. contract.

On September 14, pursuant to C. I. O.'s motion, the Board served notice upon the A. F. of L. to show cause why the decision of July 13 should not be vacated; the petitions in the earlier cases reinstated and treated as amended by the new petition; and why the Board should not reconsider and proceed to decision without further hearing. The order also proposed to make part of the record the statement of the Board's field examiner concerning the C. I. O. claims of authorization to represent employees.[5]

The A. F. of L. responded by filing a "Protest and Objection." This alleged that the proposed order contemplated a decision without the taking of evidence, to be based in part on an ex parte survey of C. I. O. claims of authorization by employees; that employees of the two units not involved in the first proceeding would have no opportunity to present evidence in their own behalf;[6] and that the Board had no authority to set aside the A. F. of L.'s existing contract by such proceedings.

The Board considered the objections, but found them insufficient, rejected the protest and, without further hearing for the taking of evidence, considered the case upon the full record, including that made in the original hearings. It again approved a company-wide unit, following the historical lines of organization, but excluded certain "fringe" classifications in conformity with generally established policy. It further found that a question concerning representation had arisen and directed that an election be held among the employees in the appropriate unit as it had been determined. The Board's decision was rendered October 14, 1943. 52 N. L. R. B. 1377.

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[4] The Board's report shows that employees of these operations had been excluded from the units in the local contracts which the A. F. of L. had with the separate operations of the company. 52 N. L. R. B. 1377, 1382-1383.

[5] The field examiner's report is introduced, not as proof of the extent of representation by the petitioning union, but to satisfy the Board that there is a substantial membership among the employees in the unit claimed to be appropriate sufficient to justify the Board's investigation.

[6] These were the plants located at Potlatch and Coeur d'Alene, which were not included in the units sought by the C. I. O. in its original petitions.

The election was held during the following November and resulted in a majority for the C. I. O.[7] The A. F. of L. filed "Objections and Exceptions to Election," see 55 N. L. R. B. 255, 256, which renewed the claim of impropriety in failing to hold another hearing and also challenged some exclusions of employees from eligibility to take part in the election. Accordingly the A. F. of L. moved to vacate the decision and direction of election, to vacate the election itself, to stay certification and to grant an appropriate hearing.

In January, 1944, the Board granted the A. F. of L.'s motion for further hearing, but deferred ruling upon the request to vacate the previous decision and the election. The hearing was held before a trial examiner in February, 1944. Petitioners appeared and participated fully, as did the company and the C. I. O. No complaint is made concerning the scope of this hearing or the manner in which it was conducted, except as to its timing in relation to the election. Full opportunity was afforded petitioners to present objections and evidence in support of them. From the absence of contrary allegation, as well as the official report of the Board's decision, it must be taken that all available objections to the Board's procedure and action were made, considered, and determined adversely to petitioners.[8]

The Board rendered its supplemental decision on March 4, 1944. 55 N. L. R. B. 255. This made supplemental findings of fact based upon the entire record, including the record in the original proceedings, the election report, petitioners' objections and exceptions, the motion for reconsideration, and the evidence and objections taken at the February hearing. After reviewing the entire proceedings, the Board found that an "appropriate hearing" had been given, within the requirement of § 9(c); ruled upon each of petitioners' objections, whether new or renewed; and concluded that none of them furnished adequate reason for disturbing its previous decision and direction for election. Accordingly it denied the motion to vacate that decision and the election, and certified the C. I. O. as exclusive bargaining representative of the employees in the unit found appropriate. A. F. of L.'s further

[7] The majority was of the ballots cast, but not of the total number of employees eligible to vote.

[8] Cf. 55 N. L. R. B. 255.

motion for reconsideration was denied and thereafter the present suit was instituted.[9]

Upon this history petitioners say they have been denied the "appropriate hearing" §9(c) requires. They insist that the hearing, to be "appropriate," must precede the election. According, the February, 1944, hearing is said to be inadequate to satisfy the statutory requirement, as well as due process, although no complaint is made concerning its adequacy in any respect other than that it followed, rather than preceded, the election.

Petitioners urge also that the procedure was unwarranted for the Board to vacate the decision of July, 1943, reopen or "reinstate" the original proceedings, treat the C. I. O.'s petition for company-wide certification as an amendment to its original petitions, and thereafter to regard the record in the earlier proceedings as part of the record in the later ones, together with the field examiner's report concerning C. I. O. employee representation.

Petitioners' exact contention concerning the reopening of the original proceedings is not altogether clear.[10] But, in any event, it clearly maintains that the Board's action, in effect treating the later proceedings as a continuance of the earlier ones, injected new issues upon which petitioners were entitled to present additional evidence. Accordingly it is claimed that the original record, together with the additional matter presented by the new petition, the motions which followed and the proceeding to show cause, was not adequate to sustain the Board's action in vacating its first decision and entering the direction for election. Although petitioners urge that the preelection proceedings were defective, they emphasize most strongly that the February hearing could not cure the failure to grant the further hearing they demanded prior to the election.

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[9] The suit is the last in a series intended to prevent the holding of the election or to avoid certification founded upon it. See Inland Empire District Council v. Graham, 53 F. Supp. 369 (W. D. Wash.); Local 2766, Lumber and Sawmill Workers Union v. Hanson, Civil Action, No. 1553 (D. Idaho), unreported; Inland Empire District Council v. Graham, Civil Action No. 834 (W. D. Wash.), unreported; Inland Empire District Council v. National Labor Relations Board, Civil Action No. 22353 (D. D. C.), unreported.

[10] The argument appears to regard them as irrevocably closed by the decision of July 13, 1943, and that decision as endowed with finality precluding the Board from later reopening the proceedings and considering further the record made in them. It seems also to suggest that the original petitions could not be amended, at any rate by treating the later petition as an amendment, after the decision, notwithstanding an order vacating it.

The Board's position is, in effect, twofold, that there was no departure from the statute's requirements or those of due process in the proceedings prior to the election;[11] and, if they were defective in any respect, the departure was cured by the full hearing granted at petitioners' insistence after the election.

We think petitioners have misconceived the effects of § 9(c). It is as follows:

> Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. *In any such investigation*, the Board shall provide for an *appropriate hearing upon due notice*, either in conjunction with a proceeding under section 10 or otherwise, and *may* take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives. (Emphasis added.)

The section is short. Its terms are broad and general. Its only requirements concerning the hearing are three. It must be "upon due notice," it must be "appropriate," and it is mandatory "in any such investigation," but may be held in conjunction with a § 10 (unfair practice) proceeding or otherwise.

Obviously great latitude concerning procedural details is contemplated. Requirements of formality and rigidity are altogether lacking. The notice must be "due," the hearing "appropriate."

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[11] The Board says that the two proceedings involved the same substantial controversy, namely, representation of the Potlatch Company's employees; and therefore the material issues were the same except that in the later proceedings the C. I. O. acceded to the decision that a company-wide unit was appropriate and sought representation on that basis. Only a waste of time and money for all concerned would have resulted, in the Board's view, from retracing the ground covered in the earlier hearings. Accordingly, it was entirely proper to treat the later ones as in substance a continuation of them and to proceed with the determination of the other questions relating to representation which the narrow ground of the first decision had made unnecessary to decide.

The Board also maintains that a further hearing was not required in the absence of a showing by petitioners that new issues were presented which required the taking of additional evidence. In its view the procedure, to show cause afforded adequate opportunity for petitioners to do this and none of the issues they presented furnished adequate basis either to require holding a further hearing or for refusing to proceed with the election upon the basis proposed.

The Board and the petitioners are at odds therefore concerning the materiality of the issues presented on the show cause procedure and their sufficiency to require further hearing for the presentation of evidence. But, in any event, the Board says that if it was wrong as to this in any respect the error was cured by the full hearing allowed in February, 1944.

These requirements are related to the character of the proceeding of which the hearing is only a part. That proceeding is not technical. It is an "investigation," essentially informal, not adversary. The investigation is not required to take any particular form or confined to the hearing. The hearing is mandatory—"the Board *shall* provide for" it. But the requirement is only that it shall be provided "in any such investigation." The statute does not purport to specify when or at what stage of the investigation the hearing shall be had. It may be conducted "in conjunction with a proceeding under section 10 or otherwise."

Moreover, nothing in the section purports to require a hearing before an election. Nothing in fact requires an election. The hearing "in any such investigation" is mandatory. But the election is discretionary. The Board "*may* take a secret ballot . . . or utilize any other suitable method to ascertain such representatives."

An election, when held, is only a preliminary determination of fact. Sen. Rep. No. 573, 74th Cong., 1st Sess., 5-6; H. R. Rep. No. 1147, 74th Cong., 1st Sess., 6-7. A direction of election is but an intermediate step in the investigation, with certification as the final and effective action. *National Labor Relations Board* v. *International Brotherhood of Electrical Workers*, 308 U. S. 413, 414–415. Nothing in § 9(c) requires the Board to utilize the results of an election or forbids it to disregard them and utilize other suitable methods.

It hardly can be taken, in view of all these considerations, that Congress intended a hearing which it made mandatory "in any such investigation" always to precede an election which it made discretionary for all and which, in the committee reports, it specifically denominated as only a method for making a preliminary determination of fact. That characterization was not beyond congressional authority to make and is wholly consistent with the discretionary status the section gives that mode of determination.

In view of the preliminary and factual function of an election, we cannot agree with petitioners' view that only a hearing prior to an election can be "appropriate" within the section's meaning. The conclusive act of decision, in the investigation, is the certification. Until it is taken, what precedes is preliminary and tentative. The Board is free to hold an election or utilize other suit-

able methods. Such other methods are often employed and frequently are of an informal character. Petitioners' view logically would require the hearing to be held in advance of the use of any such other method as much as when the method of election is used.

Congress was fully informed concerning the effects of mandatory hearings preceding elections upon the process of certification. For under Public Resolution 44, which preceded § 9(c), the right of judicial hearing was provided. The legislative reports cited above show that this resulted in preventing a single certification after nearly a year of the resolution's operation and that one purpose of adopting the different provisions of the Wagner Act was to avoid these consequences.[12] In doing so Congress accomplished its purpose not only by denying the right of judicial review at that stage but also by conferring broad discretion upon the Board as to the hearing which § 9(c) required before certification.

Petitioners' argument does not in terms undertake to rewrite the statute. But the effect would be to make it read as if the words "appropriate . . . in any such investigation" were replaced with the words "hearing prior to any election." Neither the language of the section nor the legislative history discloses an intent to give the word "appropriate" such an effect. We think the statutory purpose rather is to provide for a hearing in which interested parties shall have full and adequate opportunity to present their objections before the Board concludes its investigation and makes its effective determination by the order of certification.

In this case that opportunity was afforded to petitioners. We need not decide whether the hearing would have been adequate or "appropriate," if the February, 1944, hearing had not been granted and held. In the Board's view, petitioners, when afforded the opportunity in the proceedings to show cause held prior to the election, brought forward nothing which required it to hold a further hearing for the taking of evidence. With this petitioners disagree. We need not examine whether one or the other was correct in its view. For when the objections were renewed after the election, and others also were advanced, the Board gave

[12] Cf. note 9.

full and adequate opportunity for hearing, including the presentation of evidence, concerning them. Petitioners do not contend that the hearing was a sham or that the Board did not consider their objections. They do not ask for review upon the merits. Their only objection is that the hearing came too late. That objection is not tenable in view of the statute's terms and intent.

It may be, as petitioners insist, that their interests were harmfully affected by the outcome of the election, through loss of prestige and in other ways. It does not follow that the injury is attributable to any failure of the Board to afford a hearing which was "appropriate" within the section's meaning. This being true, and since petitioners do not now question the Board's rulings upon the merits of the issues apart from those relating to the character of the hearing, the injury must be regarded, for presently material purposes, as an inevitable result of losing an election which was properly conducted.

Petitioners also assert that the Board departed from its own rules in failing to accord them the hearing demanded prior to the election. The regulations provide for direction of election to follow the hearing before the trial examiner and, in the Board's discretion, oral argument or further hearing as it may determine. Rules and Regulations, Art. III, §§ 3, 8, 9. But the regulations also contemplate further hearings for reconsideration before the final act of certification, a procedure of which petitioners had full advantage in this case. Whether or not the hearings provided before the election were adequate to comply with the regulations, the procedure upon rehearing afterward was adequate to perform its intended function of affording full opportunity for correcting any defect which may have existed in the previous stages of hearing.[13]

We think no substantial question of due process is presented. The requirements imposed by that guaranty are not technical, nor is any particular form of procedure necessary. *Morgan* v. *United States*, 298 U. S. 468, 481. "The demands of due process do not

[13] We need not determine whether in a situation where no hearing whatever is afforded prior to an election, the failure would be cured by allowing one afterward, whether as a matter of compliance with the statute or with the regulations. That situation is not presented. The proceedings in this case prior to the election afforded opportunity for hearing. At most the hearing was defective, and the opportunity given by the postelection hearing was effective to cure whatever defects may have existed, if any.

require a hearing, at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective." *Opp Cotton Mills* v. *Administrator*, 312 U. S. 126, 152, 153; cf. *Bowles* v. *Willingham*, 321 U. S. 503, 519-521.[14] That requirement was fully met in this case.

The judgment is

Affirmed.

Mr. Justice ROBERTS dissents.

[14] Cf. also Buttfield v. Stranahan, 192 U. S. 470, 496-497; National Labor Relations Board v. Mackay Radio & Tel. Co., 304 U. S. 333, 350, 351; Anniston Mfg. Co. v. Davis, 301 U. S. 337, 342, 343; United States v. Ju Toy, 198 U. S. 253, 263; C. B. & Q. Railroad v. Chicago, 166 U. S. 226, 235; Phillips v. Commissioner of Internal Revenue, 283 U. S. 589, 596-597.